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# The Accountant<sup>ct</sup>

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS  
AND  
ACCOUNTANCY THROUGHOUT THE WORLD

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## GENERAL INDEX.

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VOLUME XXXIV. [New Series.]—JANUARY to JUNE 1906.

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JUNE 1906.



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WITH the present issue, which commences  
the 34th Volume of *The Accountant*, we  
propose to adopt a more detailed classification

of our "Law Reports," which will, we venture to think, be found a convenience to our readers. Hitherto only four special groups have been provided, dealing respectively with Accountancy and Auditing, Administrations, Bankruptcies and Insolvencies, and Company Law, leaving all decisions not coming under one or the other of these headings to be lumped together under the general heading of Miscellaneous. We now propose to provide additional headings for Partnerships, Receiverships, and Income-Tax, all of which are subjects of especial interest to our readers, and are capable of being so distinguished without fear of confusion through overlapping. In our "Current Law" column the same classification will, of course, be observed henceforward.

We should like to take this opportunity of asking more of our subscribers to keep us systematically informed of all matters of general interest that come within their experience. It frequently happens that such matters, although important to accountants, receive but scant attention in the columns of the general press, or are sometimes even ignored altogether, and we are thus often dependent upon the goodwill of our subscribers for information of value to our readers. In particular, we should always esteem it a favour if our attention is drawn to legal decisions of interest, and also for short notes of unreported cases which raise or settle any principle likely to prove of general application. The published accounts of well-known undertakings, or accounts exhibiting any curious or special feature, will also be greatly appreciated, and will in all cases be returned to the sender if a request to that effect be marked on the documents themselves.

### An Accountant's Libel Action.

IN our Law Reports this week will be found an account, reproduced from the *Birmingham Daily Post*, of the case of *Moore v. Jackson, Braithwaite & Co.*, which was tried before Mr. Justice KENNEDY at the Birmingham Assizes on the 19th and 20th ult.

The facts are fully reported in the account that we reproduce, and it is, therefore, unnecessary for us to repeat them in detail in the present article. Shortly stated, the defendant appears to have felt aggrieved at a report issued by the plaintiff to a trade inquiry through the medium of the Timber Trades Association Inquiry Agency at Hull, and to have formed a conclusion as to the plaintiff's connection with the firm into whose standing inquiry was being made which was not justified by the facts, and which was a serious reflection upon the plaintiff's personal character and standing. The libel, however, appears to have had but a limited circulation, in that it was comprised in a letter addressed by the defendant to the trader in question, one LYNEX, and so far as can be gathered there was no evidence that the plaintiff had suffered any damage in consequence of this communication. In the result, therefore, we think that the jury verdict for the plaintiff with a farthing damages about meets the case, more especially as in fixing the damages at this nominal figure the plaintiff intimated that they did not wish to deprive the plaintiff of his costs, and added a rider to the effect that they considered he had entirely cleared his character.

This finding would appear to be quite in accordance with the facts of the case; but, as his Lordship pointed out in the course of 1

summing up, the plaintiff does not appear to have duly appreciated that it was dangerous for him as an inquiry agent to make a report on the financial position of a person whom he was himself financing. It is true that the report in question stated what work the builder was engaged upon, and went on specifically to say, "In these operations he is being financed by our Mr. MOORE"; but, under all the circumstances, it would unquestionably have been safer for him to merely state that as he was financing this particular trader he did not feel able to report upon his financial standing—leaving the agency for which he acted to pursue its inquiries elsewhere. Without seeking to cast the least reflection upon Mr. MOORE's conduct in the matter from first to last, we cannot refrain from expressing the opinion that trade inquiries ought always to be conducted by persons who are not financially interested in the success of those concerning whom inquiry is being made; and if a Chartered Accountant undertakes this class of work at all it is, we think, especially important that he should be most careful upon such a point. It is, we think, a somewhat open question whether accountants ought to undertake such work at all, for naturally in many cases they can only state all that they know of a particular party by abusing the confidence of a client; indeed, in practically all cases where they are really possessed of first-hand information with regard to the matter at issue, they would be precluded by every consideration of professional honour from using that information for the benefit of inquirers. In consequence it would always be difficult, and in some cases even impossible, for an accountant to satisfactorily combine the duties of an inquiry agent with his own legitimate practice.

### An Official Blunder.

LAST week the *London Gazette* contained an advertisement of a receiving order having been made against Mr. W. F. HORNER, M.P., of 2 Charles Street, Berkeley Square. In connection with this announcement Messrs. DYSON, SMITH & MARCHANT have written a letter to the press drawing attention to the circumstances. They state that immediately upon the receiving order in question being made their client appealed therefrom, and that pending such appeal a stay of proceedings was granted. Upon the appeal being heard they add that it was dismissed upon technical grounds, and that, acting upon their client's further instructions, they forthwith applied to the Registrar of the Bankruptcy Court—in accordance with a suggestion made by the Lords Justices of Appeal—for a stay of proceedings upon the ground that the debtor was not insolvent, but was in a position to, and was prepared to, pay his creditors in full. Upon the evidence produced before him on the 8th ult. the Registrar made an order staying all proceedings until after the 22nd ult., and upon that date application was made upon further evidence, when a second order was made further staying the proceedings. Notwithstanding these circumstances, however, the receiving order was gazetted, and notice thereof was advertised in the daily press.

If the facts be as stated, there has been a serious blunder on the part of officials, which can only be very inadequately explained on the assumption that the near approach of the Christmas holidays may have produced an oversight consequent upon the absence of some members of the regular staff. A notification appeared in the *Gazette* of the 29th ult. formally withdrawing

the receiving order, but that, of course, does not place matters in their original position, however impossible it may be to go further in the direction of repairing the damage done by the original blunder.

The matter is, of course, of especial importance in Mr. HORNER'S case, as the Bankruptcy Acts provide certain important disqualifications in the case of members of Parliament. Section 32 of the Bankruptcy Act, 1883, provides that when a debtor is adjudged bankrupt he shall be disqualified from being elected to or sitting or voting in the House of Commons or any Committee thereof; and that these disqualifications are only removed if and when the adjudication of bankruptcy against him is annulled, or he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without misconduct on his part. Section 9 of the Bankruptcy Act, 1890, provides, however, that such disqualification shall not exceed a period of five years from the date of any discharge which may have been, or may hereafter be granted under and by virtue of the principal Act or that Act. Section 33 of the Bankruptcy Act, 1883, provides that if a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under that Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.

These disabilities, of course, only arise as from the date of an order of adjudication, and not from the date of the receiving order, but the improper or premature announcement of a receiving order is, for obvious reasons, especially

damaging in such a case; and we trust that the circumstances which gave rise to the blunder in this instance will be fully inquired into and satisfactorily explained.

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### Municipal Accounts.

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THE announcement made by Mr. JOHN BURNS, the recently appointed President of the Local Government Board, to his constituents on the 27th ult. with regard to the accounts of local authorities, will undoubtedly be welcomed by all who take any genuine interest in the welfare of these bodies. We do not refer, of course, to his statement that private enterprise would receive fair and just treatment from him, and that municipal activity would be similarly treated, for just such words as these would, of course, be used by the most ardent monopolist and also by the most progressive advocate of municipalism if similarly situated. The words to which we now direct attention have a greater value because they are far more definite, and moreover point, as it seems to us, to a matter which is at bottom far more intrinsically important. We have it on the authority of the President of the Local Government Board that he has already drawn up a reference and is now appointing a Committee, so that ratepayers and taxpayers may "have their accounts presented, prepared, and disclosed in such a way that he who runs may read, and he who owns may enjoy that information based upon knowledge, now not always as well revealed as it should be." He has done what his predecessor in office declined to do—namely, has acted upon the recommendation of the Joint Parliamentary Committee on Municipal Trading, which recommended that the Local Government

Department should invite the Institute of Chartered Accountants, the Incorporated Society of Accountants and Auditors, and the Institute of Municipal Treasurers and Accountants of England and Wales, the Society of Accountants in Edinburgh, and the Scottish Institute of Accountants in Glasgow, to report upon the practicability of prescribing a standard form of keeping accounts for all municipal or other local authorities.

It, of course, still remains to be seen whether the Committee nominated by Mr. BURNS will be of that practical character recommended by the Joint Parliamentary Committee two and a-half years ago, or whether he will stultify his reference by appointing merely a Departmental Committee. In the latter case, of course, matters will remain very much as they now are. The mere fact, however, that there is some little delay seems all in favour of the employment of outside and expert assistance in the matter, without which, of course, no useful result can, in the nature of things, be expected. There can hardly be any impartial business man who does not agree with the recommendation of the Joint Committee of 1903 as to the best, and indeed the only possible, way of attempting to improve the present highly unsatisfactory position. It is more than likely, of course, that the Committee now to be appointed will include a good sprinkling of officials, because the precedents are all in favour of such a course. So long as the expert element is not swamped only good could come of such a procedure; and it would certainly have the advantage of making it less difficult for the department to subsequently adopt such recommendations as might be put forward without a loss of dignity.

Another aspect of the matter which we are glad to see clearly drawn attention to by Mr. BURNS is one which we have mentioned more than once in these columns, and which, we regret to say, has given rise to no little offence in certain quarters. We allude to the statement that in some instances the methods of both keeping and stating the periodical accounts is such as fail to disclose the true facts. This, of course, is a question quite independent of those political or economic questions involved in the discussion of the abstract desirability or undesirability of local authorities undertaking industrial enterprises. It is even independent of the question as to whether or not ratepayers or investors have any right to accounts showing the results of municipal trading departments. No doubt many political and many economic arguments might be put forward in favour of the affirmative or the negative to each of these questions. The single point, however, upon which we have always endeavoured—albeit not always successfully—to concentrate attention is, that when accounts *are* published a duty is laid upon all those responsible for their publication to use their best endeavours to secure that those accounts shall be a full and fair statement of the facts so far as the facts are known, and a reasonable estimate with regard to all those matters which are questions of opinion rather than fact.

That this may be accomplished the best expert assistance should be secured. Whether it will ever be possible to design a form of accounts so simple that the average ratepayer or taxpayer can understand all its ramifications at a glance may well be doubted. Most persons in these days realise that before



they can expect to derive any intelligible information from printed or written matter they must first learn to read, and must not blame the document for any disability of their own. Many accounts are, no doubt, unnecessarily complicated, and there are at least grounds for suggesting that in some cases they have been deliberately complicated with the intention of rendering them unintelligible. But, for all that, some knowledge of accounts is necessary to enable anyone to intelligently criticise any statement, no matter how clearly it may have been framed. We think, however, that even if at some future time a stereotyped form of accounts is prescribed which is really intelligible, it is unlikely that the majority of ratepayers will be able to properly understand it and intelligently criticise it. Nevertheless, a great advance will have been made, as it will then be practicable for competent critics to see for the first time how matters really stand.

The announcement of the names of Mr. BURNS' Committee will be anxiously awaited; and equal interest will attach to the evidence heard and to the subsequent report, which, we trust, will not be delayed longer than the requirements of the case necessitate.

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### Weekly Notes.

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**Contracts and Mistake.** Referring to the recent paragraph in these columns dealing with the question of a broker's liability arising out of a mistake by the postal authorities in the transmission of a telegram, it is interesting to note the curious set of circumstances put forward by Sir William Anson ("Contracts," p. 145):—

"A. writes to X., a broker, an order to buy certain shares—that is, he makes an offer to buy shares importing a promise to pay their market price. After the

letter is written and directed he receives intelligence which causes him to change his mind, and he takes other letters to the post leaving this on the table. A servant or a friend, seeing the letter, thinks it has been forgotten, and posts it. The shares are bought just before a commercial panic, and they fall heavily in value. Is A. or X. to lose by the interference of A.'s friend or servant?"

If this situation ever occurs in reality, as it is by no means unlikely to do, there will be fine harvests for the lawyers. Meantime, perhaps our readers may care to attempt the solution of the problem for themselves.

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**"Redeemable" Stocks.** A recent issue of *The Stock Exchange Gazette* contains a long and able article on the question of Corporation "Redeemable" Stocks, occasioned by the action of the Tynemouth Corporation, whose interpretation of the adjective has given rise to much criticism. The facts are reported to be that in 1889, and again in 1893, the corporation issued 3 per cent. stock, the prospectus in each instance declaring that the stock was "redeemable at par on January 1 1913," and these particulars have appeared, since a quotation was obtained, in the Stock Exchange Official List. A month or so ago the list was altered, giving the date of redemption as "1913-49." Dealers took umbrage at what they regarded as an unwarrantable proceeding, and ultimately the price was struck out of the list. On inquiry at the Borough Treasurer's office our contemporary was informed that the stock was "redeemable at par on or after January 1 1913 at the option of the corporation," and that the corporation had not made any alteration in the conditions as had been suggested. It is rightly pointed out, however, that in the course of the compilation of the "Stock Exchange Year Book" for 1906, a proof of the paragraph dealing with the corporation's issues was sent to the Borough Accountant for correction in the usual way. In that notice the following sentence appeared:—

"The principal of the stock falls due January 1 1913, against which date a Sinking Fund has to be provided. The Sinking Fund may be employed in the purchase of stock, and the power has been exercised by the purchase of £12,800 stock."

This was returned with the Borough Accountant's compliments, the above statement being allowed to stand. Our contemporary pertinently remarks that, in view of the corporation's reading of the word "redeemable," and seeing that it has allowed a misconception to

appear year after year in the "Stock Exchange Year Book" and the Official List, it would be interesting to learn when the distinction between "redeemable" and "to be redeemed" first dawned on the corporation. If a logical process of reasoning be applied, the word "payable" also confers an option, and thus interest which is "payable" half-yearly on 1st May and 1st November may also be paid "on or after" those dates—that is, it may go on accumulating until 1949 or any other more distant period. *The Financial News* says that the suffix "able" is one of the most troublesome and misleading suffixes in the language:—

"Visible" is that which can be seen, and "audible" that which can be heard; but "execrable" is not that which can be, but that which is, execrated. And, although "applicable" means that which can be applied, "respectable" does not imply that which can be, but that which is, respected."

But it agrees that the corporation's interpretation is apt to cause confusion. It may be pointed out, however, *per contra*, that it would be an entirely novel doctrine to suggest that corporations and companies are responsible for the contents of either the Official List or the "Stock Exchange Year Book."

#### Bank-note Statuettes.

It has been the custom of the Treasury authorities of the United States to dispose of the mascerated pulp occasioned by the annual destruction of old and worn-out notes to contractors, who bought it by the ton for the object of working it up into busts and statuettes representative of immortal Americans—the Hero of the Axe, and others. With an inscription denoting the amount of sterling represented by these images they are said to have found a ready sale among tourists and souvenir hunters. It is, however, now reported that it has been discovered that the macerating machine does not perform the work of destruction quite so efficiently as might be wished, and stray bits of notes have fallen into the hands of unscrupulous persons, who, where a number was intact, have not hesitated to endeavour to recover cash thereon as a note damaged by accident. No more bank-note pulp will be sold, and thus another American industry has gone by the board! It is not improbable that a new generation of tourists will find their busts of George the Truthful One made of compressed street sweepings, office dust, and surrendered policies of insurance.

#### Municipal Profits.

We understand that the Coventry Town Council has just decided to expend a further sum of £5,000 on the purchase of electric motor cars, to be let out on hire. It is stated that the previous investment of £7,000 for similar purposes is earning about 12 per cent. interest by the hire of the motors, while the interest and Sinking Fund expenses represent a charge of only 6 per cent. Coventry Stock yields about £3 8s. per cent. at the current market rate, but even assuming that 3 per cent. represents the interest charged, and the other 3 per cent. is available as a Sinking Fund, it would be twenty-four years before it would accumulate to an amount sufficient to redeem the original loan. It would be interesting to know what kind of electric motor car the Coventry Town Council possesses which can be expected to last for twenty-four years, and to in the meantime continue to produce a revenue representing 12 per cent. on the original cost.

#### Table A.—Quorum and Demand for Poll.

In reply to our correspondent "J. E. P.," who raised the question in a letter which appeared in our last issue, Clause 42 of Table A provides as follows:—"At any 'general meeting unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried . . . shall be 'sufficient evidence of the fact.' One would imagine that these words are perfectly clear. Of course, three members can demand a poll, but they are not entitled to have one taken, and their demand cannot affect the validity of the resolution declared by the chairman to have been carried.

#### Shareholders' Methods of Voting.

The injunction recently granted by Mr. Justice Joyce in the case of *McMillan v. The Le Roi Mining Company, Lim.*, on a motion to restrain the company from circulating among its shareholders voting papers or cards to be used at a poll demanded by the chairman, and to restrain the company from acting on any resolution purporting to be passed on such voting papers or cards unless such shareholders be present in person or by proxy at the poll, raises a point of very considerable public interest. The question is, as his Lordship remarked, one upon which there cannot really be the slightest doubt. *Prima facie*, in order to vote the person entitled so to do must attend in person to record his vote. The articles of association may indicate different or alternative methods of voting, but no method not so provided for can be valid. It may, of course, be argued that the

views of the general body of shareholders could be more readily ascertained by the issue to all of them of voting papers, to be returned by post rather than by person; but it is not for the directors to determine how the views of the shareholders shall be ascertained. That is a point which has been predetermined by the articles of association of the company, and if it be thought that the methods provided by the articles are unsatisfactory, the proper, and indeed the only, course is to get the articles altered. There is, no doubt, very much to be said in favour of voting papers as a means of testing the views of shareholders. A somewhat important objection to them, however, is that they would tend to still further discourage shareholders from taking the trouble to attend meetings; whereas, of course, it is only when an effectively representative body of shareholders can be induced to attend these meetings that any really satisfactory system of company administration can be expected to be produced.

**Sharing-Out Clubs.** Christmas has again not been allowed to pass without producing its usual crop of defalcations on the part of those to whom subscriptions have been entrusted by the members of various kinds of sharing-out clubs. In *Lloyd's News* of the 24th ult. no less than six separate cases of defalcation are recorded, but it may well be questioned whether they represent the sum total. In the more serious cases the responsible official has naturally absconded. In the other cases the tendency of the magistrates appears to be in favour of giving the accused time to raise the deficiency before dealing with the case. As we have repeatedly pointed out, this procedure has no adequately deterrent effect. It is true that in some cases it enables those who have been swindled to recover their money; but as a rule that money is only recovered by the relatives of the accused being forced into the clutches of money-lenders, and it is questionable whether it is desirable that such a result should be brought about by such means.

**Unregistered Friendly Societies.** At Middlesbrough on the 20th ult. five members of a friendly collecting society were each fined £10 for not registering their society and depositing the necessary £20,000 with the Board of Trade. The fines inflicted were at the rate of 1s. per day, whereas the maximum penalty provided by the statute is £50 per day. There

may, of course, have been special circumstances in connection with this case which make the sentence inflicted adequate, but bearing in mind the enormous amount of harm that is sometimes done, and especially at this season of the year, by dishonest persons collecting subscriptions on behalf of bogus societies, it is, we think, to be regretted that the authorities generally appear to be indisposed to take a sufficiently serious view of the matter.

**Branch Accounts.** The question asked last week by our correspondent "Student" is not very clearly put, but if we understand his case aright we should say that it is in all circumstances undesirable to issue accounts in which part of the transactions are taken up to another date. It would, in our opinion, be better to delay the preparation of the accounts of the undertaking as a whole until the proper returns have been received from the Branch up to the date on which the Head Office Books were closed. The practice does, however, obtain in some quarters (chiefly in connection with foreign mines, where only administrative work is performed at the Head Office) of issuing accounts taken up to, say, the 31st October at the Branch and the 31st December at the Head Office; and the result, of course, is that the combined accounts, being neither one thing nor the other, are of limited value, and as difficult to audit as they are to criticise. We consider the practice both undesirable and unnecessary, but when it is followed it should, we think, certainly be followed consistently—that is to say, certain selected transactions of a later date ought not to be arbitrarily included with a view to increasing the apparent profits.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

### The Accounts of Local Authorities.

[We have received a further letter from "Enquirer" under the above heading, but as it deals with personal matters only, we have not thought it of sufficiently general interest to justify insertion.—Ed. Acct.]

**Land Sale Accounts.***(To the Editor of The Accountant.)*

SIR,—I should be obliged if you, or any of your readers, would inform me through the columns of your esteemed journal whether a text-book is to be obtained dealing with Land Sale Accounts upon a double-entry principle, from the point of view of a company whose business consists in buying land, developing it, and disposing of same in small lots.

I am, yours faithfully,

30th December 1905. **CONSTANT READER.**

**Establishment Charges.***(To the Editor of The Accountant.)*

SIR,—I regret that I did not make myself sufficiently clear in my letter. The business is a printing business, and the uses to which the establishment charges will be put when ascertained would be for the purpose of "prime cost" or "oncost" in the form of a percentage, by adding to the various departmental wages paid.

Yours faithfully,

28th December 1905. **F. L. D.**

**Colliery Shortworkings.***(To the Editor of The Accountant.)*

SIR,—It would be interesting to me, and probably to others also, if accountants with experience of Colliery Accounts would state what the custom is in different districts in dealing with "shortworkings" in the annual Balance Sheets.

I have always recommended that shortworkings should never be treated as an asset unless a corresponding Reserve is provided to balance the amount. And this view I have always found approved of as being a perfectly safe system of treatment, because it not infrequently happens that there is considerable doubt as to whether the "shorts" will ever be recovered, and consequently to treat them as an asset would result in overstating the profits; moreover, even if they are worked up in succeeding years, the profits of these later years are anticipated if the "shorts" are not written off until then.

If the certain rent is £1,000 per annum, this means that for each year the company has that rent to pay for its mine, but it is further usually provided that this

rent shall be more if a certain output is reached. The annual rent, therefore, is £1,000 or more, but never less.

If one year's workings are only £500, it is sometimes contended that in that case £500 only should be written off and £500 should be treated as an asset, but nevertheless £1,000 was the actual rent of the mine for that year, and cash of £1,000 is required to pay it; which latter, if not fully provided out of the profits, would have to be met from the capital of the company, of course assuming that the annual profits are fully divided.

It seems to me that the actual annual rent payable, whether worked up or not, should be written off, and any shortworkings only treated as a matter of record, not as an actual asset. Such shorts are, of course never recovered from the landlords, but only come back into cash when they are written off or deducted from future profits—or, putting it another way, no portion of the shorts is ever recovered at all, but in certain future years a less rent may be payable than the actual tonnage shows owing to such shorts.

I recently saw some copies of the Balance Sheets of a large and important company which showed at a certain date a large sum for shortworkings in the Balance Sheet as an asset; a few years later a reduction of capital took place and the shorts disappeared, afterwards the shorts were written off each year and ceased to be treated as an asset. This seems to show that the company then began to see the danger of not providing a Reserve against shorts which might never be worked up.

When there is every reasonable probability of shorts being worked off, and also that there will be profits to meet same, it might be justifiable to treat the amount as an asset; but as no one can possibly know whether profits will be made or not in the future, I am strongly of the opinion that the annual charge should never be less than the certain rent.

Some leases only allow shorts to be worked off within a certain time, and if not worked up by then they are forfeited. In these cases, if any rent is carried forward it must necessarily be written off at least within that time; the danger lies, however, in cases where there is no restriction as to time.

I should be glad if other accountants would give their views, as I am inclined to think that nowadays it

is not at all a usual course to treat "shortworkings" as an asset.

Yours faithfully,

28th December 1905.

TONNAGE RENT.

### Secret Reserves.

*To the Editor of The Accountant.*

SIR,—Mr. Stephen Tryon, F.C.A., whose excellent paper on Secret Reserves appeared in your last issue, would appear from his references to my works to be unacquainted with the more recent editions. The subject is discussed in my "Advanced Accounting" (p. 248 of the second edition), and, in addition to the reference to the subject on p. 256 of my "Auditing," sixth edition, to which he refers, the matter is mentioned on pp. 203-4. The sentence which Mr. Tryon quotes from p. 258, and which, he states, he does not understand, will, I venture to think, be found clearer if the two preceding pages are perused.

Yours faithfully,

LAWRENCE R. DICKSEE.

January 2nd 1906.

### A Review Reviewed.

*(To the Editor of The Accountant.)*

SIR,—In the review with which you favoured a work of mine on "Bookkeeping," on the 16th ult., objection was expressed with regard to the balance of a certain Balance Sheet, and to two brief descriptions given of other items of the same. May I point out that the Balance Sheet and the two descriptions form the concluding portion of a solution of an examination paper, and are in strict accordance with the directions given at the head of the paper? As examination papers can only ask for skeleton representations of real books, perhaps examiners may be pardoned if, in cutting out items, they sometimes forget to reduce the rest in due proportion. In any case they are responsible for their own work. I think you will consider I am entitled to this explanation as to matter of fact.

I do not, further, ask for the benefit of your columns for the mere purpose of differing in opinion from your reviewer, who is bound to be very competent, but his remark respecting the "true nature of any set of books" must give the impression that I have taken only one system in hand; I hope, therefore, I may mention that I have attempted to give, in an order of evolution, different phases still in vogue of the general theory of

the subject. A fuller explanation than I have seen anywhere else of the true nature of the method referred to in the review is given in Chapter XV.; but with "business" in place of the firm, capital a liability, deficit an asset, and in other respects, it is somewhat abstract, and should be all the better, in teaching procedure, for something more concrete to lead up to it.

In a Balance Sheet on any other theoretical basis there seems no necessity to regard the balance between liabilities and assets as belonging to either, any more than the transferred balance of a Goods Account is obliged to be taken as consisting of goods. Of course, I could pursue the subject further, but it is too wide to expect your permission to do so.

Yours faithfully,

JOHN WALMSLEY.

*Eccles, Lancs, January 2nd 1906.*

### Banker's Liability.

*(To the Editor of The Accountant.)*

SIR,—I notice the following sentence in a note of your issue of December 30th 1905, headed "A Question of Banker's Liability":—"Of late years an increasing number of business men have adopted the practice of requiring bank cashiers to initial the counter-foils of their Paying-in Books, *but among private customers such a practice is unknown*, and even with "business houses it is not general." I think that the underlined words are decidedly too strong, and certainly not quite accurate. At all events, at the London and South-Western Bank, Clapham Junction Branch (and, I presume, at other branches), the cashier initials the counterfoils with a blue pencil whenever amounts are paid in either by a private customer or by a business firm, quite as a matter of course and without any request to do so on the part of the customer.

Yours truly,

W. F. DINGWALL.

*London, January 2nd 1906.*

[Our correspondent is too literal. Of course it would be absurd to suggest that *no* private customers ever get the counterfoils of their paying-in slips initialled, but the proportion is so microscopic as to be negligible. Bank cashiers will, as a rule, naturally initial counterfoils when the book is handed to them for the purpose, but how often is it done by private customers?—*En. Acct.*]

## The Chartered Accountants' Students' Society of Sheffield.

### Income Tax Administration and Incidence, as regarded by the Taxpayer.

By C. E. ISAACS.

A PAPER read at a meeting of the above Society at Sheffield on November 29th 1905.

I had the pleasure of addressing the Chartered Accountants Students' Society at Birmingham in 1900, when my subject was "Popular Errors concerning an Unpopular Tax."

My lecture was fully and accurately reported in *The Accountant* on January 12th 1901, and was noticed in its issue of March 16th 1901.

A supplementary lecture was given by me at Liverpool, which also appeared in *The Accountant* of December 28th 1901, and was reviewed in the issue of January 11th 1902.

While treating the complexities of the income-tax in a popular style, I endeavoured to deal with its technicalities as fully and exhaustively as I could within the time at my disposal.

I shall ask you now to be kind enough to accompany me in another direction, as I enter upon the immediate subject of this paper.

#### WHAT DOES THE PUBLIC THINK OF THE INCOME-TAX?

By the public I do not mean the vast majority of the community who contribute nothing to it, and who neither know nor care anything about it, but those who are strongly interested therein as taxpayers, political economists, and men of the world.

#### What does the Press say?

I will refer to an article which appeared not long ago in a well-known London daily paper possessing a large circulation.

"The men who do the work of assessing the income-tax and collecting it are finishing their ghastly labours for the year, and 'rounding up' the last batch of dodgers.

It is an unpleasant business, that of the income-tax. A large percentage of those who pay it deliberately cheat the Government. Those who collect it know they are being cheated. The whole thing is conducted on a sort of swindling basis. Income-tax payer and income-

tax collector are surrounded by an atmosphere of the thieves' kitchen. The big dodgers pay little or nothing. Only the honest men pay all, and they are few and far between.

However much income-tax a man pays, or however little he feels that he is being 'had,' he knows that there are thousands of men with incomes as large as his who pay less than he does. A citizen with £1,000 a year may pay £50 a year tax, or £40, or £30, or £20, or £10, or nothing, according to his capacity to dodge liabilities. Even if he pays up everything, the attitude of the Surveyor of Taxes towards him seems to him to be that he is guilty of trying to defraud.

The fact is that the income-tax makes story-tellers and cheats out of many of us. One must either be a story-teller, a cheat, or a dupe. Which shall one be?

The income-tax is really collected by a junior Criminal Investigation Department—a minor Scotland Yard. The Surveyors and collectors ought to wear police uniforms and carry handcuffs. They are thief catchers really, or have that air. They believe no one. Every circular they send out intimates frankly that it is addressed to a notoriously artful dodger, and that we are a nation of persons whose principal occupation is that of making fraudulent returns.

Take the case of employees of limited liability companies. Under the practice in force the Government exacts the name of every employee who gets more than £160 a year, but it cannot compel, or, as a matter of policy, does not compel, the company to tell the amounts paid. If the company refuses to divulge the figures the Surveyor has a fit of imitation hysterics, and makes all sorts of threats. But if the treasurer stands to his guns nothing happens, and the figures are not insisted on.

Now some limited companies tell the facts, others do not. In the cases of the latter an employee drawing £1,000 a year can send his income in as £170, and the authorities are powerless. But in the case of a company that confesses its salary list the employee at £1,000 a year has to pay his full amount.

The result is a feeling of injustice all round. The man who cheats the Government boasts about it. The man who cannot cheat, but who would like to, feels that a mean advantage has been taken of him.

If the income-tax were enforced absolutely, and if every cheat were prosecuted, there would be a situation almost amounting to a revolution. The Government does not want trouble, so the authorities bargain with the taxpayer, and compromise with him.

It is like huckstering with a second-hand clothes dealer.

The income-tax puts the citizen in this dilemma: If he pays everything he thinks he is a fool, and if he dodges some of it he feels like a sort of swindler."

It is clear that a bitter feeling towards the Surveyor of Taxes exists in some quarters, and I am sure it is unjust to those officials generally.

The Departmental Committee on Income-tax, in their report which was presented last June, state that the tax appears, on the whole, to be administered with a minimum of friction.

The article proceeds thus:—"The men who do the work of assessing and collecting the income-tax are finishing their ghastly labours for the year." The writer will find before the financial year is ended that the work of collection is scarcely begun.

He alleges that a large portion of those who pay it deliberately cheat the Government.

The Committee are at one with him; but as about four-fifths of the tax is deducted at the source, or is subject to verification, the area within which fraud or evasion can be practised is very limited.

I think a very small percentage of taxpayers set themselves deliberately to wrong the Revenue. Most of the damage done is caused by those who neglect to make returns.

It seems to me that a maximum fine of £5 in ordinary cases would cure this evil, and a liberal increase in the amount of the estimated assessments by the Additional Commissioners would soon stop most of the leakage. Indeed the suggestion of the witness representing a most important Chamber of Commerce before the Departmental Committee is, to my mind, a very practical one. He says: "It seems to me that if a man has an income, and does not choose to return it, he cannot make any complaint if the Commissioners assess him, and then if they assess him too highly he has only to come before them."

The writer of the article goes on to state that "the big dodger pays little or nothing. Only the honest men pay all, and they are few and far between." I know that honest men are not so scarce as all that, notwithstanding the views of this modern Diogenes, and I have had experience enough to steer clear of such pessimism.

"If a citizen pays up everything the attitude of the Surveyor of Taxes towards him still seems to be that he is trying to defraud."

There are doubtless suspicious and tactless men among officials as elsewhere, but I am satisfied they are compara-

tively few, and by irritating the public they generally succeed in damaging their own careers.

Surveyors have very trying, and sometimes invidious, duties to perform. They are not always masters of the situation. There are usually faults on both sides, when harsh or rude treatment is experienced.

The next quotation is: "The fact is that the income-tax makes story-tellers and cheats out of many of us. One must either be a story-teller, a cheat, or a dupe. Which shall one be?"

I do not see why one need act any of these despicable parts, especially if a taxpayer allows a professional accountant to look after his interests.

"The income-tax is really collected by a junior Criminal Investigation Department—a minor Scotland Yard. The Surveyors are thief-catchers really, or have that air, and intimate frankly that we are a nation of persons whose principal occupation is that of making fraudulent returns." If this be so, the Surveyors as a body must have lately changed for the worse. Such an attitude was not characteristic of them while I was an official, and would be regarded and treated as reprehensible by their official superiors, if brought to their knowledge.

The writer alludes to the lists of employees which are asked for, and to inequalities of treatment caused by the want of power to compel employers to state the amount of remuneration paid.

Many years ago Parliament decided that, under Schedule D, employers should not be compelled to furnish such information.

The Departmental Committee recommend that power may be granted to assessors to require full information as to amounts of salaries, fees, and wages paid.

I do not join issue with the writer here, or with his next paragraph, which informs us that: "Some limited companies state the facts, others do not. In the cases of the latter an employee drawing £1,000 a year can send his income in as £170, and the authorities are powerless. But in the case of the company that confesses its salary list the employee at £1,000 a year has to pay his full amount. The result is a feeling of injustice all round. The man who cheats the Government boasts about it. The man who cannot cheat, but who would like to, feels that a mean advantage has been taken of him."

In concluding his article the writer says: "The income-tax puts the citizen in this dilemma: If he pays everything he thinks he is a fool, and if he dodges some of it he feels like a sort of swindler."

I would reply that the citizen in question should not

think himself a fool when he acts honestly; but if he dodges the impost, he is right in thinking he is "like a sort of swindler," and a very bad sort, too, for he swindles not so much the Government as his fellow taxpayers, who have in some way—by a higher rate of duty or by other means—to make good the loss to the Exchequer caused by his fraudulent conduct.

#### LESSONS GLEANED FROM THE EVIDENCE GIVEN TO THE DEPARTMENTAL COMMITTEE.

##### (1) *As to the Advantage of Assessment on the Basis of the Profits of the Single Year immediately preceding the Year of Assessment.*

Two Chartered Accountants upheld the present basis—the average of three years preceding the year of assessment.

On the other hand, the representative of a Chamber of Commerce supported the adoption of one year only as a basis, and his view has the support of at least three official witnesses.

I think it a fair and simple one, provided the assessment for each of the two first years of a business is made upon the profits of the first year, and that in the last year of a concern, which is usually a poor one, the assessment should be revised at the end of the year, as is now the case, under the 133rd Section of the Income-tax Act of 1842—a section which it is proposed should be abolished, but which might be retained to apply to the particular circumstances referred to above.

The adoption of this plan would greatly simplify procedure, and would mitigate the irritating anomaly of paying tax on a high assessment when profits are falling or non-existent; or, on the other hand, that tax should be levied on only a small amount when trade is flourishing and profits rapidly increasing.

One objection which has been made to this mode of assessment is that the assessment year in which the tax is payable may be a disastrous one, while the previous year may have been an exceptionally good one, and that to require a heavy amount of duty at a time when great losses are being suffered would be to inflict a grievous hardship; but this may be obviated by reserving, at the end of the preceding and profitable year, the tax needed to discharge the liability of the following year.

If, however, the basis of the three years' average is retained, it should be uniformly applied to all subjects assessed under Schedules D and E, for the sake of simplicity, instead of some being charged on one year, some on three years, some on five years, and some on the actual profits of the year of assessment; and the 133rd Section of the Act of 1842 should be retained to correct such average

at the end of the assessment, if the taxpayer wishes to avail himself of it.

##### (2) *Depreciation of Assets charged to Capital Account.*

Attention was called to want of uniformity in the allowances for wear and tear of machinery and plant, the supposed non-allowance of deductions for obsolete machinery, and for depreciation in the value of leases, patents, &c.

It was not generally admitted that there was such an impassable gulf between capital and income that a concern should be absolutely debarred, under any circumstances, from setting against the profits shown by the Trading Account any wastage of assets before arriving at the balance for assessment to income-tax.

As regards wear and tear, a perusal of the evidence laid before the Commission confirms me in the views expressed in my Birmingham lecture in the year 1900 that special standards of allowance should be fixed by legal enactment, as it is not just to the taxpayer that independent standards should be adopted by every set of Commissioners.

##### *Obsolescence of Machinery and Plant.*

A concession was made by the Chancellor of the Exchequer, in his letter of May 28th 1897, "that where a claim is made in respect of the introduction of more modern machinery in a factory no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the existing value of the machinery replaced. Any excess in the cost of the new machinery, over the actual present value of the old, is an addition to the capital of the business, and cannot be regarded as a charge upon revenue for the purposes of income-tax assessment."

This concession has been generally overlooked. A Chartered Accountant, who gave evidence before the Departmental Commission, contended that the concession referred to should apply to heavy as well as light machinery. The wording of the Chancellor of the Exchequer's letter limits the concession to such obsolete apparatus "as requires frequent substitution."

This witness thought that on closing a branch shop an allowance should be made to the extent of the difference between the cost and selling price of such fixtures.

I make no comment on this, except that his high reputation deserves that his expressed opinions should receive respectful attention.

I agree with him that on various kinds of machinery a normal state of depreciation could be fixed, subject to alteration in special cases; also in thinking that a liberal interpretation of the Chancellor's letter would, to a great



extent, obviate the necessity of uniform rates of allowance for wear and tear, because the requisite adjustment could be made when the obsolete machinery is replaced.

(3) *Treatment of Incomes derived from Personal Labour and from Permanent Sources respectively.*

The question of the incidence of the tax as between incomes earned by personal exertion and those derived from permanent sources was not referred to the Committee.

Without supposing it possible to make the incidence of the tax absolutely just and accurate, a few considerations may be mentioned in support of the view that incomes which arise from capital should be more heavily taxed than those arising from personal exertion.

This principle is practically admitted in the mode of taxing collieries and mines through levying income-tax on the coals or minerals produced, less the cost of production.

Capital expended in the purchase of a life annuity is treated in the same way, to some extent, as the annuity, which is wholly taxed, undoubtedly includes a portion of the purchase-money, though it may not be possible always to fix the exact proportion.

The Departmental Committee say that the division of such an annuity into principal and interest is, after all, a fiction.

You may or may not agree with them, but it is equally as fair that the annuitant should pay income-tax on his full annuity as that the colliery or mine owner should pay on the full value of the coal recovered from his estate, less the cost of working and distribution.

One expert witness argued that pensions earned by service should be split up, and no tax charged on the capital element. (As a retired official I should have no personal objection to this way of assessing me.)

The man who has no capital except his physical or mental faculties, trained and educated, gets no allowance for wear and tear, although we know that the human machinery gradually wears out, in spite of renewal and repair. He gets no deduction for anything of the sort under Schedules D and E. When his working capital is exhausted by old age or death the Revenue has had the tax on all the income produced by the gradual exhaustion of that capital. Therefore I contend that there is not necessarily comparative injustice in including some portion of capital, as well as income, in the balance chargeable to income-tax. At the same time, I think it would be sound policy to take a liberal view in dealing with repairs and renewals of plant and machinery, whether in the form of a percentage for wear and tear or otherwise.

(4) *Co-operative Societies.*

A great sense of injustice exists in the minds of many traders, who complain that they have to pay income-tax on profits, while co-operative societies, which have grown rapidly and steadily in recent years, pay none.

There is a misapprehension as to the reason for the exemption of such societies as are registered under the Industrial and Provident Societies Act.

They are not exempted from income-tax simply because they are co-operative—inasmuch as such societies as the Civil Service Supply Association, Lim., are charged income-tax like an ordinary trading concern—but because they are registered under the Industrial and Provident Societies Act, and therefore presumably consist mainly of persons whose individual incomes do not exceed £160.

If such concerns were assessed, every shareholder therein whose income did not exceed £160 would be entitled to claim repayment of income-tax on his share of the profits. Thus useless expense and trouble would result by first assessing and collecting the duty from the society as a whole, and then repaying all or most of it back to members individually entitled to exemption. Some shareholders are, of course, liable to the tax, and there is no statutory exemption for them as individuals. They may be, and should be, called on for returns of their incomes arising from their shares.

(5) *Fraud and Evasion.*

No witness disagreed with the view that fraud and wilful neglect to make returns should be suitably punished; but some were in favour of criminal prosecution in proved cases of fraud, and of small fines in cases of mere negligence.

One gentleman, the whole of whose evidence was distinguished by robust common sense, and is most interesting, considered—and, I think, rightly—that where there is persistent neglect to make returns the Commissioners should heavily increase the assessments—a course more likely to be efficacious in stopping leakages in the Revenue than multiplying prosecutions for penalties.

One witness, a Chartered Accountant, recommended that officials should, under the order of the Commissioners, be sent with power to investigate the books and accounts of persons making returns in cases where they (the Commissioners) have reasons to believe that a return is untrue—an excellent way of ascertaining useful facts, but would the public stand such a system? I very much doubt it.

The representative of the Chamber of Commerce before alluded to objected to the unfairness of hearing appeals in private.

Taxpayers generally would probably not like to have their affairs discussed in public before a bench of magistrate.

On the other hand, many will, no doubt, sympathise with his objection to a clerk of the Commissioners whispering to them all the time of the appeal, and then for the appellant to be asked to leave the room. As the witness remarks: "You leave the room. The clerk, who is the 'solicitor for the prosecution, remains behind; the 'verdict is given in your absence, and when you come 'back you are told, 'We have fixed it at so and so.' You 'cannot go beyond that. You go away, even if they are 'right—and very often they are right—with the sense that 'they are wrong; there is a sense of injustice, because 'there is no publicity. There is no reasonable equality in 'arguing the matter."

This witness did not say what became of the Surveyor of Taxes, who is required to attend all meetings for hearing appeals.

The gentleman now knows that any aggrieved taxpayer, under Schedule D, has the option of appealing to the Special Commissioners instead of the local Commissioners.

Before leaving this branch of my subject I refer to the want of uniformity in practice, mentioned by one of the accountants before the Departmental Committee, as to allowing a managing director's salary as a deduction from profits of a limited company converted from a private business in which such managing director was a partner. I quite agree that this deduction ought to be allowed before assessing the balance under Schedule D, inasmuch as the salary is charged separately under Schedule E, so that its retention also under Schedule D would constitute a double assessment.

For example, if the average profits of a company were £1,000, the Schedule D assessment on the private firm would be £1,000, and no separate assessment on the partner would be necessary; but if the concern were turned into a limited company, and the managing partner became a managing director, the latter being chargeable under Schedule E, the liability of the company under Schedule D would be *nil*. To charge the company under Schedule D on £1,000, and to assess the managing director on £1,000 under Schedule E, would be so manifestly unfair that no further demonstration is needed.

Why should not Schedule E be abolished, and all incomes under that head be transferred to Schedule D?

My experience of the public, for nearly thirty-eight years, among all classes, and in various parts of the United Kingdom, has clearly revealed to me their views,

erroneous and otherwise, concerning the incidence and the working of this tax.

A manufacturer—a large employer of labour in a town of which he was the chief magistrate—contended that he was entitled to deduct from his profits, for assessment under Schedule D, the salary he drew for his own services. Although I reasoned with him for a very long time I failed to convince him that he was wrong.

I have known men specially versed in figures and finance who, while granting that income-tax is not legally admissible as a working expense, will not admit that it is fair to disallow it, because they say that by so doing income-tax is charged not only upon income, but upon income-tax.

*Interest on Partners' Capital.*—There have been numerous cases in which such interest has been improperly deducted from gross profits to arrive at the balance for assessment, resulting, in one instance, in a return being made for about £3,000, which should have been nearly £8,000. Numerous, and far more glaring, discrepancies could doubtless be cited.

*Interest on Borrowed Capital.*—Similar errors sometimes occur with regard to interest on loans, but not so frequently, as it seems to be better known than formerly that income-tax may be legally deducted from each payment of annual interest.

*Cost of renewing Plant and Machinery.*—Some persons think it right to charge their gross profits with the cost of all such renewals, and a percentage in addition, *fixed by themselves*, on the cost of such plant and machinery, forgetting that if they are allowed wear and tear as well as cost of renewal they are getting the same thing twice over, and that a percentage for wear and tear to be virtually just must be fixed by the *Commissioners*, and should be applied impartially all round.

*Private Expenditure.*—Another false idea is that a man is entitled to deduct from his earnings, before assessment, the cost of his own and his family's maintenance, and to pay income-tax, not, according to law, on what he makes, but on what he saves.

*Allowance of Two-thirds Rent of Dwelling-house when Portion is used for Business Purposes.*

Section 101 of the Income-tax Act of 1842 provides for the allowance of a deduction from the profits of trades and professions of a sum not exceeding two-thirds of the *bond fide* rent of such dwelling-house, which the Commissioners shall on due consideration allow.

Cases of hardship occur in applying this provision, by reason of the limitation to two-thirds of the rent, although

a person may use a very small and insignificant portion of such dwelling-house for residential purposes.

The proprietor of a boarding establishment, or a boarding school, may reserve perhaps only a twentieth part of the premises as his private apartments, but is allowed a deduction of only two-thirds, as if his private apartments were worth one-third, instead of perhaps a tenth of the full annual value of the whole of the premises.

Cases also may arise where a trader resides with his family away from his business premises, but having occasionally to remain there overnight, owing to business exigencies, he has a bedroom reserved for his use. He is entitled legally to a deduction of only two-thirds of the rent, just as if his family and himself resided on the premises, instead of renting a separate house.

These hardships might be remedied by conferring on the Commissioners the power to allow a just proportion of the rent as a deduction from the gross profits under Schedule D, without limiting it to two-thirds.

#### *Incidence of the Tax.*

Let us see what the average man thinks of the general incidence of the tax.

He usually considers that it is very fair *in principle* that if the person who makes £1,000 a year pays five times as much duty as the one who makes only £200 it is quite just. Another thinks that small incomes should pay at a lower rate than large ones, and advocates an extensive graduated scale, not seeing that it will fail in its application if pushed too far.

It may be wise to exempt all incomes not exceeding £160, and to allow abatement up to £700, or even higher; but to carry on a graduation to incomes running into thousands is, I think, altogether needless and impracticable.

(I may on some future occasion devote a lecture to this subject alone.)

As a general rule, heavy taxation on a man of wealth operates simply in curtailing his luxuries; but in the case of his humble brother, who has to provide for a large family, perhaps, on £200 or £300 a year or less, he may suffer keen privation in his struggles to maintain, educate, and equip his children to fight the battle of life.

Some think that incomes derived from personal exertions should be taxed at a lower rate than those arising from invested capital.

Even if all these considerations were admitted, and it were possible to give effect to them by legislation and administration, surely the income-tax system is already intricate enough without making it more so.

#### *Justification of the Income-tax.*

Justification of the tax does not, and cannot, rest on a basis of inherent fairness. Not all, or even the greater part, of the Imperial Revenue arises from direct taxation. The poor man, who is liable to little, if any, income-tax, may contribute through his oftentimes large family a much greater amount in the way of indirect taxation (especially if, in addition, he is a heavy drinker and smoker) than his richer neighbour, who may be a teetotaler and non-smoker, and a bachelor as well.

The main justification of the tax is its *productiveness*, and the facility with which it may be doubled or trebled, without altering its machinery or disturbing its framework when the Chancellor of the Exchequer is in embarrassed circumstances.

#### *Deliberate Fraud.*

Some taxpayers deliberately attempt to defraud the Revenue, which is not such an easy thing to accomplish, as may be imagined, without being ultimately found out.

The greatest cause of leakage is neglect to make returns, also carelessness, ignorance of the working of the tax, and omission to keep proper accounts.

#### *Attempt to obtain Justice by Committing Fraud.*

Some people reason thus (I am quoting from my actual experience of them). They assume, perhaps rightly, that their neighbours pay 20 or 30 per cent. less than they ought, and they think they owe it to themselves to let themselves down to the same level to obtain justice. They therefore wilfully make insufficient returns.

Later on, it may be after the lapse of many years, the Surveyor of Taxes finds them out—and he is almost certain to do so, either before or after the delinquents' decease—and calls upon them, or their executors, to make good what the Exchequer has lost through their false ideas and practices.

The following extracts from a letter addressed to a trade journal illustrate the mental exercises of some taxpayers when invited to rectify the errors of the past by payment of what is called "back duty."

#### *The Income-tax Authorities and Correct Bookkeeping.*

"Sir,—I have noticed in recent issues your remarks upon the lack of proper bookkeeping amongst retail traders, and your advice to employ the services of a professional accountant. By my recent experience, I cannot say I any longer share your surprise at this apparent neglect. Until recently I have always supported and adopted the system, and for the past six years have employed a qualified accountant; but I now doubt the wisdom of so doing."

I have recently been called upon by the Inland Revenue authorities for particulars of my trading during the past six years, from the time when I took my business. After considerable reluctance to reveal my private affairs, I gave them the details for that period, with the result I am presented with a bill for arrears of over £100, principally made up, contrary to the demands of proper accountancy and sound finance, by charging me on all that has been allowed for depreciation of lease, fixtures, alterations, &c., and for providing against bad debts. These items, in conjunction with the loss of abatement, has sprung upon me this bill, which is quite out of proportion to my ability to pay it. Had I not had my books carefully dissected I should have simply defied the authorities in the same way as very many others, who avoid the expense of an accountant, do. They could not possibly have made out that I had not paid in full, which I contend I have done, by the results shown in my accountant's figures.

I consider we are as much entitled to an allowance on depreciation of fittings, &c., as on machinery or house property, and I think all trade societies and trade journals should use their powers in getting such allowances made at least in accordance with proper bookkeeping. Until such concessions are made and encouragement given to keep books properly it is not to be wondered at if traders protect themselves against such demands by doing without books and professional accountants.—Yours truly,

RETAILER.

October 11 1905."

His trouble was certainly not caused by employing an accountant to audit his books, but in omitting to consult him before making up his return. He was misled by charging to Revenue depreciation of leases and reserve for bad debts. He was obviously in error by supposing he could cure his complaints by doing without books.

It would be a very good thing if taxpayers would leave it to accountants to prepare their returns, and obtain proper settlements, rather than land themselves in difficulties through their crude and misguided efforts in the vain attempt to save a little expense.

For a quarter of a century your Institution has benefited your clients and the Revenue alike by finding facts upon which correct assessments could be based, and saving an enormous amount of friction as well.

My experience of your profession is that its efforts are always directed to the object of arriving at correct conclusions, whether palatable or not, and that, while loyally endeavouring to protect the interests of its clients, it does all it can to enable the Revenue to obtain what is justly and reasonably due.

Large amounts may, and do, escape assessment, as the result of much real misapprehension in the mind of the public.

I think therefore that proceedings for penalties should be taken as seldom as possible, as the co-operation and goodwill of the public and the accountants are of more value to the Government in increasing the yield of the tax than victories gained by legal proceedings in trying to make people honest by Act of Parliament.

In my experience it was a rare occurrence for a taxpayer and his accountant to refuse to make good the losses of duty for past years, if caused through his own errors, whether the law could compel him or not.

Of course, where a person wilfully defrauds the Revenue, it is only right, in the interest of other taxpayers, that the law should operate to prevent his reaping a pecuniary advantage by wrongdoing; but drastic administration of the penal provisions relating to income-tax tends to undermine the mutual confidence which should subsist between the public and the officials, thus working to the prejudice of this most important branch of the Revenue.

It should be borne in mind that pressure of business, absence of proper books, and omissions to take stock by causing neglect to make returns lead to trouble and friction.

A general distaste for the whole subject, and a fear of getting into trouble through making returns which, however honestly made, may not be accurate, account in no small degree for the too general disregard of this important duty, rather than a deliberate desire to cheat the Government.

The proposed plan of giving publicity to proved cases of fraud, such as is adopted by railway companies, might endanger the stability of the tax, the existence of which is justified, partly by the secrecy which is observed in regard to assessments under Schedule D.

#### *Treble Duty.*

The recommendation that a surcharge should be legally permissible at any time within three years from the end of the year of assessment appears reasonable; but a maximum penalty of treble duty for each year gives virtually power of recovery of single duty for nine years, which, I think, is unnecessary.

Double duty would be practically equal to six years' single duty, and co-extensive with the period provided for in the Statute of Limitations.

If returns are made up under the guidance of accountants, and specially tested by the Revenue officials even

three or four years, there will, I believe, be comparatively little leakage; and this testing can, and will, doubtless be efficiently carried out, if a sufficient staff is provided for the purpose.

*How to Diminish the Unpopularity of the Income-tax.*

I will sum up my remarks by stating my conviction that the best way of popularising the tax, and at the same time increasing its productiveness, is to simplify its forms and regulations, so that they may be easily understood by ordinary people; that it should be administered always in a kindly spirit; that every encouragement should be given to the public to repose confidence in the Surveyors of Taxes, which should not be used for the purpose of tripping up taxpayers, but to secure their co-operation in obtaining the best and fairest results. Last, but not least, no encouragement should be given to those who *deliberately* set themselves, either actively or passively, to wrong the Government, which is the same thing as robbing their fellow-taxpayers.

I thank you, gentlemen, for your patience and attention, and shall now, with the Chairman's permission, be ready to answer to the best of my ability any questions which you may wish to put to me.

## Leicester Chartered Accountants Students' Society.

### Some Notes on Executorship Matters.

A Lecture read at a meeting of the above Society,  
held on December 13th 1905.

By N. P. C. KELLAND.

AN Executor is a person nominated by a deceased in his will to carry out his wishes and administer his estate.

As a rule, the person nominated has given his consent to become executor during the testator's lifetime. If not, he should make up his mind at once whether he will act or not. He cannot renounce if he has once elected to act, or if he has performed any acts which show an intention on his part of acting as executor, such as releasing a debt or applying for payment of a debt, even although he may not be paid it.

An executor duly appointed, and acting before obtaining a grant of probate, is sometimes described as an executor *de son tort*, but this is not correct. An executor *de son tort* is one who takes upon himself the office by intrusion, not being constituted an executor by the testator in his will.

Before applying for a grant of probate the executor has every power except that of bringing actions, but a debtor of the estate is not bound to pay him until the grant is obtained. He derives his title, however, from the will, and

not from the probate, and the property of the deceased vests in him from the date of death.

An executor's powers may be summarised as follows:—

(a) A power of sale over all property vesting in him. By the Land Transfer Act, 1897, where realty is vested in a person without a right of survivorship, it shall on his death, irrespective of any dispositions in his will, become vested in his legal personal representative. This does not apply to copyholds, or, as already stated, to property entailed. Probate may therefore now be granted in respect of an estate which consists only of realty, provided some part of such realty could have been disposed of by the deceased. The provisions of this Act are not retrospective.

(b) He may pay all debts including debts barred by the Statute of Limitations, but not any debts barred by the Statute of Frauds.

(c) He must not carry on the testator's business longer than is absolutely essential for the benefit of the estate, and in order to complete any unfinished contracts on which an action could be maintained against the executor.

If the testator expressly directs him to do so, and specifies a sum of money to be set aside for that purpose, he must limit himself strictly to the amount stated, and must not employ any of the other assets of the estate for the purpose. If, however, the business is not earning any profits, he would *not* be justified in continuing it, even though authorised to do so.

An executor has no right of preference as to a legacy, even if bequeathed to him for his services. He may prefer one creditor to another of like degree, this being subject to the decision in *Hankey, Cunliffe-Smith v. Hankey*, which I shall refer to later. His right of retainer is not taken away by an administration order, and he may retain for a statute-barred debt due to himself.

An executor has no right of retainer except out of legal assets, and though the Land Transfer Act has made realty not passing with a right of survivorship or copyhold a legal asset, it has not conferred on the legal personal representative the right of retainer as regards such realty.

He may only bring actions in respect of injuries done to the estate, and in the case of realty his right of action is limited to injuries to the estate committed within six months of the testator's death, and an action in respect of which is brought within six months of the testator's death.

(d) He may compound with creditors.

(e) He should not proceed to distribute the assets amongst the legatees unless satisfied that all debts have been paid, and not until after the expiration of the time limited in the notice to creditors under Lord St. Leonard's Act, which he ought to give. Six weeks is considered to be reasonable notice for the purpose of the Act.

(f) He may pay interest on such debts as carry interest, but not upon others.

(g) He may employ agents for the transaction of business where such course is proper and necessary, such as bankers, solicitors, &c. He may employ an accountant, if the nature of the accounts requires it. Observe that nearly all of the powers of an executor may be exercised by him before probate.

Where there are two or more executors, one executor can give a valid receipt for money, &c., but however many trustees there may be, the receipt of all is necessary.

An executor who joins with his co-executor in giving a receipt will become chargeable in respect of the same. This does not apply to trustees, who are compelled to join in giving the receipt, provided they can prove that they did not obtain possession of the property.

The powers of Administrators resemble in most respects those of executors, with the important distinction that (with the exception of burying the body) they can not be exercised till after the grant of letters of administration. The rights of administrators are also less extensive than those of an executor—*e.g.*, the right of retainer does not, as a rule, attach to the office of administrator, neither do the powers of composition conferred by the Conveyancing Act, nor the powers of sale or mortgage of realty conferred by Lord St. Leonard's Act extend to administrators.

In the recent case of *Ellis and Ellis* it was held that where letters of administration were revoked by the probate of an existing will appointing an executor, the grant of administration was wholly void, and also any voluntary dealing with the estate is void, on the grounds that the assets are vested in the executor from the death.

The executor's first duties after he has decided to act are:—

- (1) To bury the body of the deceased.
- (2) Make an inventory of the property. (The Court may order the production of this if the circumstances justify it.)
- (3) Take possession of the deceased's property and effects.
- (4) Prepare an account for estate duty.
- (5) Apply for a grant of probate, and, having obtained probate with as little delay as possible, he should proceed to convert such part of the estate as may be standing in unauthorised securities, and free the estate from any pressing liabilities that might be a source of danger to it.

As regards the conversion of property standing in unauthorised securities, the following points should be borne in mind:—

(a) The rule in *Baird's Executors* case. That where the testator was the assignee of leasehold property, the rents due on which are greater than the annual value thereof to the estate, the executor will be guilty of a *devastavit* in not assigning such lease, even to a pauper.

(b) As to selling the property in order to convert it into authorised securities, the Court allows the period of a year from the date of the death of the testator, unless the will expressly directs otherwise, or the executor can show a sufficient reason for the delay. The securities in which an executor can invest are as follows:—

- (a) Public Funds or Government Securities.
- (b) Real or Heritable Securities in Great Britain or Ireland.
- (c) India Three or Three and a-Half per Cents.
- (d) Bank of England or Bank of Ireland Stock.
- (e) Securities guaranteed by Parliament.
- (f) Metropolitan Board of Works or London County Council Consolidated Stock, or Metropolitan Police Debentures.
- (g) Debentures, Rent Charge, or Guaranteed or Preference Stock of any home railway company which has for the last ten years paid at least 3 per cent. on its ordinary stock.
- (h) Railway or Canal Stock, whose undertaking is leased in perpetuity to a railway company whose ordinary stock has paid the dividend just stated.
- (i) Indian Guaranteed Railway Debentures.
- (j) B Annuities of the Eastern Bengal, East Indian, or Scinde, Punjaub, and Delhi Railways, and Deferred Annuities of Classes D or C of the East India Railway Company.
- (k) Indian Railway Guaranteed Preference.
- (l) Debentures, Guaranteed, or Preference Stock of any water company in Great Britain and Ireland having for the last ten years paid at least 5 per cent. on its Ordinary Stock.
- (m) The Corporation Stocks of any borough having a population of 50,000.
- (n) The Stocks of Water Companies having a power to levy rates over a population of 50,000, and whose levy has not for the previous ten years exceeded 80 per cent. of the amount authorised.
- (o) Any Securities authorised for the investment of cash under the control of the Court.

The Colonial Stock Act, 1900, authorised trustees to invest in such stocks, if registered in the United Kingdom,

and listed by the Treasury in the London and Edinburgh *Gazettes*.

As to redeemable stocks, they must not be redeemable within fifteen years at a fixed price, or purchased at a price exceeding 15 per cent. above such price. He may vary any of these investments from time to time as he thinks fit.

As to a testator's power of directing that the income of his estate shall be accumulated, it is limited by the provisions of Thellusson's Act as follows:—

- (1) Twenty-one years from the date of the death of the testator.
- (2) The minority of a person who was living at the testator's death.
- (3) The minority of any person who would inherit on attaining his majority.

In the last instance this only applies where the accumulation of income is directed for the purchase of real property.

The Act does not apply where the accumulation is for the purpose of paying debts or raising portions.

The executor may be directed by the terms of the will to invest in securities other than those prescribed by statute, and, if so, he incurs no liability should the estate suffer loss in respect of such investments. There is a tendency now on the part of persons making a will to insert a wide investment clause in it, due, no doubt, to the low rate of interest on Consols.

This places the executor in rather an unenviable position, as the tenants-for-life, knowing the terms of the will, may wish for a higher rate of interest than prudence admits of.

By Section 8, Sub-section 8, of the Trustee Act, 1893, executors must not advance on mortgage more than two-thirds of the value of the property. This was always customary, but the Act in question has made it statutory. The executor in such a case should employ both an independent solicitor and surveyor, and the Court will not hold him liable if he can satisfy it that when making the loan he was doing so on the advice of an able practical surveyor acting independently. If the estate is solvent the executor must pay the debts in the following order:—

Funeral and Testamentary Expenses.

Debts due to the Crown.

Debts to which particular statutes give preference, such as Income-tax, Rates, and Regimental Debts.

Debts of Record, such as registered judgments and recognisances, and unregistered judgments, if recovered against the executor personally.

Specialty and Simple Contract Debts.

Debts on Voluntary Bonds, and Promissory Notes without consideration.

In order to take priority a recognisance must be enrolled, and a regimental debt must have been incurred by an officer while on service.

In the case of insolvent estates the debts must be paid as in bankruptcy.

As to specialty and simple contract debts, it has been decided in the case of *Hankey, Cunliffe-Smith and Hankey* that an executor must not pay a simple contract debt in full in preference to a specialty contract debt, provided he has had notice of the latter. If he does so, having received such notice, he will be personally liable. This applies also to the executor's right of retainer. He may, however, pay such debts *pari passu*. The executor's right of preference ceases when a judgment or an administration order has been pronounced, but not by reason of an order for an account under Order XV. A solicitor having a lien upon the deceased's estate is entitled to be paid before the other specialty and simple contract creditors.

An executor should take steps to ascertain if there are any judgments registered against the estate. The fact of his not having had notice of a registered judgment is not material, as, if registered, it is a debt of record, and he is presumed to have knowledge of it.

If a judgment has been obtained against him personally he must treat it as if it were a registered judgment.

A foreign judgment, however, is only a simple contract debt, and takes precedence only over such debts as voluntary bonds, &c.

The executor is expected to realise the assets that are outstanding—*i.e.*, those that are not in securities authorised by Acts of Parliament or by the testator in his will—within a year of the date of the death of the testator, but there is no fixed rule as to this, and if he can show any reasonable excuse for not having done so the Court will not hold him liable. The Court now regards the matter of the executor's year more leniently than formerly.

As to real estate under the Land Transfer Act, 1897, the person entitled to any realty, which, by the Act, is vested in the legal personal representative, may apply to the Court for an order for the property to be conveyed to him after the end of the year. Such an assent on the part of the executor does not require stamp duty. The following are some of the instances in which a personal liability attaches to an executor:—

For loss arising to the estate by reason of his failure in getting in and realising such portion of the assets as may

be outstanding, and putting the same into a proper state of investment, without any reasonable cause for the delay. Note here that the limit of a trustee's liability for non-investment is the capital money and interest at 4 per cent. The beneficiaries have not the option, as was at one time supposed, of requiring the amount of authorised stock which might have been bought at the time when the investment ought to have been made, together with the subsequent dividends. If he should have applied such money to his own use he will then be charged with 5 per cent. interest. As a rule only simple interest will be decreed; but where the executor ought, by the terms of the trust, to have made compound interest, he will be charged with it, as, *e.g.*, upon a trust to accumulate.

A trustee must never allow any assets to remain outstanding upon personal securities. Similarly for losses arising through his not freeing the estate from onerous contracts, or liabilities which he might have got rid of.

For carrying on the trade without authority, or beyond his authority. Here he is doubly liable: (1) To the creditors, (2) to the beneficiaries.

He is liable for losses arising through the improper employment by him of agents, as where he has employed an agent to do work beyond the scope of the agent's proper business, including loss arising from the fraud of a co-executor, unless he can show that the money so lost was never under his control, and that there was no neglect of duty on his part. Also where he distributes the assets amongst the legatees without leaving sufficient to pay the debts, unless he shall have given proper notice to creditors to send in their claims under Lord St. Leonard's Act, and they shall have failed to do so within the time specified in the notice.

An executor is, of course, always liable for any wilful fraud on his part, and for paying any debts out of their legal order. In connection with this he must bear in mind the case of *Hankey, Cunliffe-Smith and Hankey*.

The following are some instances of when the Court will dispossess an executor and appoint a receiver to the estate:—

Paying debts out of their proper order.

Undue delay in getting in the estate without any reasonable excuse.

Prolonged absence abroad.

Habitual drunkenness.

The executor must, when there is an insufficiency of assets, pay the legacies in their proper order. He must not pay legacies which have lapsed—*i.e.*, where the legatee had died during the testator's lifetime—or legacies which

have suffered ademption—that is, the testator having dealt with the subject-matter of the legacy during his lifetime.

Legacies are of three kinds:—

(1) General legacy, £100.

(2) Specific legacy, "my bay mare."

(3) Demonstrative legacy, "£100 of my £1,000 Consols."

Legacies are liable to lapse—*i.e.*, to fail—owing to the death of the legatee during the testator's lifetime.

In certain cases legacies do not lapse, in spite of the legatee having died during the testator's lifetime. They are:—

(a) When real property is left in tail to a person who shall die in the testator's lifetime, leaving issue capable of inheriting under such entail, the devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the testator's death.

(b) Where real or personal estate shall have been left to a person being a child of the testator for an interest not determinable at or before the death of such person, and such person shall die in the testator's lifetime leaving issue who shall be living at the death of the testator, such devise or bequest shall not lapse.

General legacies are liable to abate first on a deficiency of assets for payment of all the legacies. Annuities abate with general legacies. If no time of payment is mentioned in the will they are considered to accrue from the date of death, the first payment being due at the end of the year.

Specific legacies are liable to ademption, *i.e.*, to fail, by reason of the subject-matter being dealt with by the testator himself during his lifetime in a manner inconsistent with the terms of the will, or through not being in existence at the date of the testator's death, but are not liable to abatement by reason of the insufficiency of assets; whilst a demonstrative legacy ranks with the specific legacies until the fund out of which it is payable is exhausted, neither will it be liable to ademption through the failure or alienation of the property pointed out as the primary means of paying it.

A *donatio mortis causa* is a gift made by a person in such a state of illness as to warrant an expectation of death. It differs from a legacy and resembles a gift *inter vivos* in the following respects. It takes effect from delivery, and need not be proved as a testamentary act. It requires no assent on the part of the executor. It is revocable during the donor's lifetime, and will only be made absolute by his death. It is liable for the debts on a deficiency of assets. It is subject to the payment of duties if made less than twelve months before the date of death.



Legacies carry interest at the rate of 4 per cent. from a year after the date of death, as they are payable within that time. There are certain exceptions to this, viz.:—The following legacies carrying interest from the date of death:—

- (1) A legacy given to a child where no other provision is made for its maintenance.
- (2) A legacy charged on land.
- (3) A legacy given in satisfaction of a debt that was subject to interest.
- (4) Specific legacies, and also demonstrative legacies while they remain specific.

Annuities are considered to accrue from the date of death, unless otherwise stated in the will, and the first payment becomes due at the end of a year from the date of death.

If a creditor of the estate seizes the subject-matter of a specific legacy, the person entitled to it may claim from any beneficiary whose legacy would rank prior for abatement to it.

A few other points of importance in connection with legacies are:—

A legacy payable in a foreign country must be paid in accordance with the value of the currency in that country.

If the estate is solvent, and the property available at once, then a legatee or next-of-kin can bring an action for administration before the end of a year from the date of death.

A devisee of realty under the terms of the Land Transfer Act may, if the executor has not conveyed the land to him at the expiration of a year, apply to the Court, who will make an order accordingly.

An executor receiving notice of a charge upon a legacy need not inform the party giving the notice of his knowledge of a prior charge, and this applies also to a trustee. An important point for money-lenders.

It was held in the case *In re Trenchard; Trenchard v. Trenchard* that, in the absence of express stipulation in a will, a gift of an annuity charged on land did not fail by reason of the land being unable to bear it. It became a charge on the personality. The land had been mortgaged, and did not realise sufficient to pay off the mortgage.

It was held in the recent case of *In re Chaytor; Chaytor v. Horn* that where property is given in trust for sale and conversion, with power to postpone conversion and retain any investment, whether authorised or not, the will containing no express or implied gift of income pending conversion, the tenant-for-life is only entitled to the income

of such of the securities retained as are authorised, to the extent of 3 per cent. on the value at the death of the testator. If part of an estate therefore was invested in 4 per cent. Colonial Inscribed Stocks, at their present yield of about  $3\frac{3}{4}$  per cent., the tenant-for-life would only get 3 per cent.

Locke King's Act states that anyone inheriting realty must take it subject to any mortgages or charges that may exist thereon. The provisions of the Act apply to leaseholds also.

The assets of a deceased's estate are of two kinds, Legal and Equitable:—

Legal assets are those which come to the executor by virtue of his office.

Equitable assets are those created by a testator in his will, such as charging real estate with the payment of his debts.

The Land Transfer Act, 1897, has, to all intents and purposes, made realty not entailed nor copyhold a legal asset; for even if the testator states in his will that the real property is to vest in some person other than his executor, it nevertheless vests in the executor for a year, and this also applies to realty over which the testator had a general power of appointment. It does not, as already stated, confer the right of retainer on the executor. An executor must not sell any of the property to himself, nor will a sale for the purpose of a re-sale to himself be allowed.

The following is the order in which the next-of-kin are entitled to a general grant of letters of administration:—

- (1) Husband or Wife.
- (2) Children.
- (3) Grandchildren.
- (4) Great Grandchildren.
- (5) Father.
- (6) Mother.
- (7) Brothers and Sisters.
- (8) Grandfathers and Grandmothers.
- (9) Nephews and Nieces, Uncles and Aunts, Great Grandfathers, Great Grandmothers.
- (10) Great Nephews, Cousins, &c.

The Intestates Act, 1890, provides as follows:—

When an intestate dies leaving a widow, but no children, and the net value of the property does not exceed £500, the widow shall be absolutely entitled to all of it; and if the whole exceed £500, the widow shall be entitled to a charge of that amount on the realty and personality (and she gets this £500 in addition to and without prejudice to her share

in the residue, after payment of the said sum of £500). This £500 is a first charge on the realty and personalty proportionate to their respective values.

The value of the personalty for this purpose is the net value for estate duty, and the realty is valued as follows:—Twenty times the amount of the assessment for income-tax on the property under Schedule A, less any mortgage or charge thereon, and less any debts charged on the realty. If at an examination you are given in such a case the amount of the tax paid under Schedule A, and not the amount of the assessment, then, with the tax at 1s. in the £, you multiply the amount of it by 20 twice. First to bring it up to the assessment; and, secondly, to the twenty years' purchase prescribed by statute.

Subject to the foregoing, an intestate's estate is divided in the following manner:—

**Personalty.**—If the intestate dies leaving a widow and children she will be entitled to one-third and the children to two-thirds in equal shares, and if any child be dead, leaving issue, such issue will take the parent's share, claiming *per stirpes*.

If there are no descendants the widow takes one-half, the father the other, or if no father, then the mother, brothers, and sisters take the other half in equal shares *per capita*. If any brother or sister shall have died leaving issue, such issue will take the parent's share, provided the mother or a brother or sister of the intestate be then living (*i.e.*, the issue claim *per stirpes*).

Beyond the children of a deceased brother or sister no right of representation exists. If an intestate leaves *only* a widow, cousin, and nephew, the last cannot participate, as there is neither a mother, brother, nor sister of the intestate living. The widow would get half and the cousin half.

If there are no descendants and no father, mother, brother, or sister living, then the widow will get one-half, and the next-of-kin the other half amongst them, claiming *per capita* (*i.e.*, it will be divided equally amongst them according to the number of individuals). If there be no widow or child the father will take all; if no widow, child, or father, the next-of-kin will divide the whole in the same proportions as they would have divided the half had there been a widow.

If no father, brother, or sister, or issue of a deceased brother or sister, the mother will be entitled to the whole, and if the deceased die leaving a widow, but no next-of-kin, the widow will claim half, and the remainder will fall to the Crown.

If the intestate die leaving descendants, but no widow,

the descendants will be entitled to the whole, claiming *per stirpes*.

The real estate of an intestate subject to the provisions of the Intestates Act, 1890, is divided as follows:—

**Widow and Children.**—The eldest son gets the whole of it, subject to a charge of one-third of the income to the widow for her life, with the reversion to it at her death. If there is no son living it would pass to the next-of-kin. If he leaves a widow and no children, subject to the proportion of the £500, it goes to the heir-at-law, who has to pay the widow one-third of the income for her life, with the reversion to it at her death. If he leaves no widow and no children it goes to the heir-at-law. If no heir-at-law, to the Crown.

As regards the widow's dower—one-third of the income for her life—if a question on it should be asked at the examination, you should show the whole amount of the balance (less the proportion of the £500) as belonging to the heir-at-law, whoever he may be, with a note to the effect that the widow is entitled to one-third of the income for her life. Do not show it as two-thirds to the heir-at-law and one-third to the widow, as that would be incorrect. She has nothing to do with the capital whatever, but only a share in the income for her life.

On the widow's death, if there are any arrears due in respect of her dower, her executor can recover it within a period of six years from the date of her death, unless her husband has been dead for upwards of twelve years. Then he cannot recover at all, unless some payment on account of the dower has been made during that period by the heir-at-law.

There are two old Acts still in force affecting the distribution of an intestate's estate—viz., the tenure of Gavilkind, which prevails chiefly in the County of Kent, and it is doubted whether it is to be found elsewhere. The most remarkable feature of this tenure is the descent of the estate in the case of intestacy, not to the eldest son, but to *all the sons* in equal shares, and so to brothers and other collateral relations, on failure of *nearer* heirs. The custom is generally supposed to have been a part of the ancient Saxon law, and preserved by the struggles of the men of Kent at the time of the Norman Conquest. The custom of borough English prevails in several cities and ancient boroughs, and districts adjoining them. According to this custom, the estate descends to the *youngest son* in exclusion of *all* the other children in the case of an intestacy.

In both these tenures the property is subject to the widow's right of dower of one-third of the income for her life.

To obtain a grant of letters of administration the person

seeking the same must give a bond conditional for collecting and administering the personal estate. The bond is made with one or more sureties, and the amount is usually double that under which the estate and effects are sworn.

If no executor has been appointed by the will, or the executor be dead, or shall refuse to act, administration is granted usually to the person who appears by the will to be most largely interested in the estate. If the will does not show this, recourse must be had to the statutes of distribution. The residuary legatee will be preferred to the next-of-kin or the other legatees; after him the widow or next-of-kin are entitled to the grant, provided they have an interest in the estate.

In the above-mentioned cases of administration the powers given to the administrator last for his life, and extend to all the personal estate of the deceased; there are other cases in which only a limited grant of administration will be made.

Grants may be limited—(1) As to duration, (2) A particular property, (3) for a particular purpose.

Examples of grants limited as to duration:—

- (a) *Grant durante absentia*: Where the executors to whom probate shall have been granted are out of the jurisdiction of the Court.
- (b) *Durante dementia*—i.e., during the lunacy of the executor.
- (c) *Durante minore etate*: During the infancy of an executor.
- (d) *Pendente lite*: During the pendency of a suit touching the validity of the will, or for the revocation of probate.

Grants limited to a particular property are:—

- (a) *De bonis non*: Where an executor who has taken out probate and has died without appointing an executor for his own estate, and without having completely administered the estate.
- (b) Administration limited to property situate in this country and passing under a foreign will.

Grants limited for a particular purpose:—

- (a) *Ad colligenda bona*: For the collection of the estate in the case of its consisting of perishable property.
- (b) *Ad litem*: To represent the interests of the deceased in legal proceedings in cases where the proper representatives will not act.
- (c) Save and except any particular portion, and some others.

Apportionment between capital and income requires full attention on the part of an executor. The Appor-

tionment Act, 1870, enacts that all rents, annuities, dividends, and other periodical payments in the nature of income (except annual payments on policies of insurance) are, in the absence of express stipulation in the will, deemed to accrue from day to day and to be apportionable as to time. There are, however, several points that require careful noting here.

First, as to limited companies. Lord Justice Lindley laid down as a definition of a public company that it was a company that had power to transfer its shares, and that dividends paid by such a company were capable of being apportioned between capital and income—that is, the proportion to date of death to capital and after death to income.

In the case of a *private* company, however—that is, one that cannot transfer its shares—no such apportionment must be made. The whole of the dividend is dealt with according to whether it is declared before or after death. If before death, all capital; if after death, all income.

The profits of a partnership are not considered to be earned until ascertained, therefore no apportionment is made here, and if the deceased was a partner at the time of his death it follows that the profits from the date of the firm's last Balance Sheet to the date of death cannot be ascertained until after death, and therefore are income. The balance standing to his credit at the date of the last Balance Sheet is capital.

The executor, in dealing with partnership matters, should bear in mind that, in the case of death, land belonging to a partnership is *personalty*, but in the case of a co-partnership it is *realty*.

The profits from the voyage of a ship are, like the profits of a partnership, not deemed to be earned until the voyage is completed and the profit ascertained, and therefore not apportioned. The case of a public shipping company, which has power to transfer its shares, is different; the profits can be apportioned. As regards a joint venture, if the profits are not ascertained until after death, then the whole of such profits are income.

In dealing with the interim dividends of public companies the executor should hold such amounts in suspense until the dividend for the whole year has been declared, and, if the company is a public one, apportion the full dividend between capital and income according to the date of death.

If you are given at the examination, in an apportionment question, the name of a company not generally known, you can deal with it either way you like (provided the words "private" or "syndicate" are not used). Then you must deal with it as a private company; but whatever way you decide to deal with it, make a footnote to show whether

you have treated it as a private or a public company, and give Lindley's definition.

In the case of mining companies, dividends are frequently paid irrespective of any period, and on the occasions when the company has any funds to do so, unless, of course, the dividend is stated to be for a specific period. This is an exception to the rule as to the dividends of public companies being apportionable.

Profits and losses on buying and selling shares are carried to capital. Where the proceeds of an investment are bequeathed absolutely, the legatee or remainderman will receive the benefit of any dividend that is accruing. There will be no apportionment, the whole of the proceeds being capital. On the other hand, if stock is bought with a dividend accrued on it, the tenant-for-life will get the benefit of the same. (*In re Duff; Muttlebury v. Muttlebury.*)

In the case of a bonus paid by a company, it was decided in the case of *Bouch and Sproule* that when a bonus is paid out of profits previously set aside, and takes the form of an issue of paid up shares, such bonus is to be treated for the purpose of apportionment as capital. As the case of *In re Hoare & Co., Lim.*, has been reversed in the Court of Appeal, a company can pay such a bonus, even if it necessitates drawing on an existing reserve fund. If a question merely states that an executor receives a bonus from a company, your answer should be, "I should write to the secretary of the company in question, and ask him to inform me in what light his directors regarded the bonus, if it is in the nature of capital or of profits, and deal with it accordingly." In the case of *Whithead and Whithead*, it was held that when a company paid off cumulative preferential bonds, together with arrears of interest on them, the whole of such payment was capital. If the assets include preference shares (not described as cumulative) in a limited company, and on which the full dividends have not been paid, the executor should see the company's articles of association, as in the case of *Earle and Webb* it was held that in the absence of any provisions in the articles preference shares were to be considered as cumulative.

As regards the account which has to be submitted by an executor when applying for a grant of probate, the following points should be remembered.

As to the assets, do they include any of the following classes?—

**Realty** situated in a foreign country.

**Heirlooms** which cannot be disposed of, and which do not produce any income.

**Personalty** situated abroad of which the testator was not

the owner, but only had a life interest in, and which did not become a British trust, or revert to a British trustee at his death.

If any of these classes of property form part of the estate they are not liable for estate duty.

As regards the liabilities, the following will not be allowed as deductions:—

Voluntary bonds and debts other than for valuable consideration.

Arrears of voluntary pensions and allowances to servants.

Debts due on realty in foreign countries.

Debts due in British possessions and on foreign personality, if they exceed the value of the property.

Debts which have not been contracted to be paid in the United Kingdom, nor are charged on any property in the United Kingdom, and where there is no property situated out of the United Kingdom liable for duty in it, from which they can be deducted.

Funeral expenses not in keeping with the deceased's position in life.

The cost of erecting a tombstone, bringing the body from abroad, and purchasing mourning for the servants.

Estate duty payable on realty under the Land Transfer Act, 1897, must not be included by an executor among testamentary expenses.

Duty paid on personality in a foreign country may be deducted from the personality liable for estate duty in the United Kingdom. As regards property situated in a British possession, the value of both the realty and personality must be added to the estate, and the amount of any duty payable thereon in a British possession may be deducted from the amount of estate duty payable in this country. This does not, however, apply to Burma. Estate duty is payable on the principal value aggregated, subject to certain deductions of all property, real and personal, settled or not settled, which passes, or is deemed to pass, on the death of any person. The executor must value the assets. In the case of *stocks and shares*, they are to be taken at one-quarter above selling price. *Furniture, pictures, &c.*, should be valued by a professional valuer; *other property* should be valued in accordance with an estimate of what it would fetch if sold in open market. The Inland Revenue Commissioners can order an official valuation, if they think fit.

No duty is payable on works of art, &c., which do not yield income, unless and until they are sold, or come into the possession of any person competent to dispose of them, irrespective of whether he has any intention of doing so or

not. It would appear, therefore, that a private individual, being a tenant-for-life of articles coming within this section, would render himself liable for duty, if he charged a fee for exhibiting them. Where the deceased person was entitled by law to the rents and profits of real property of his wife, and has died during her lifetime, such property shall not be deemed to pass by reason of her then becoming entitled to the property in virtue of her former interest.

In the case of an officer killed in war, or dying from accidents, wounds, or disease contracted in connection therewith within twelve months before death, the Treasury may remit, or, if paid, repay, up to an amount not exceeding £150 in any one case, the whole or any part of the death duties in respect of property passing to the widow or lineal *descendants* of the deceased, if the total value of the estate for the purpose of estate duty does not exceed £5,000. This Act does not apply, however, to lineal *ascendants*. Therefore any part of the property passing to a father or mother would be liable for estate duty.

If the estate includes a reversionary interest not fallen in at the date of death, then the executor can either pay it with the rest of the duty or when it falls due, but he must include, for the aggregate value of the estate, its estimated value at the date of death. If he waits until it reverts to the estate, then he must add the amount which it has actually realised to the total value of the rest of the estate, for the purpose of ascertaining the scale under which the reversion is payable. For example, a reversionary interest not fallen in at the date of death is estimated for the purpose of ascertaining the aggregate of an estate at £600.

Including this estimate, the net value of the estate amounts to £9,900, and duty at the rate of 3 per cent. is paid on the estate, less the reversion. The reversion falls in, and realises £800, an increase of £200 over the amount estimated for estate duty, which brings the aggregate to £10,100. Duty, therefore, would have to be paid on the reversion, £800, at 4 per cent., the total aggregate of the estate exceeding £10,000.

If the net value of the realty and personalty liable for estate duty (not including property settled otherwise than by the will of the deceased) does not exceed £1,000, this property is not to be aggregated with the settled property, and the principal value of the property is liable for estate duty, but no succession, legacy, or settlement estate duty is payable.

In the case of small estates, where a fixed duty is payable, the executor has the option of paying on the *ad valorem* scale.

*No duty is payable* where a person has created a life interest in his property, and on the termination of the interest the property reverts to himself.

The Commissioners may on certain terms allow the postponement of payment of the duty, if they are of opinion that the immediate sale of the property, in order to meet the duty, will involve a considerable sacrifice. This duty is payable at the option of the accounting party either by eight yearly or sixteen half-yearly instalments, the first instalment being due at the end of twelve months from the death, with interest at 3 per cent. from that date, and the interest due on the unpaid duty is added to each instalment.

The estate duty on annuities may be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of death, and after the expiration of those twelve months interest on the unpaid portion of the duty shall be added to each instalment.

In the case of agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the principal value is not to exceed twenty-five years' purchase of the annual value (taken on the basis of the assessment under Schedule A).

The executor should present his account and swear his affidavit with the least possible delay, as interest runs from the date of death to the date of payment of the duty at the rate of 3 per cent.

Settlement Estate Duty is an additional duty of 1 per cent. on property passing by will or settlement for a life interest only, and is payable only once during the continuation of the settlement.

*No duty is payable* where the only life interest is that of a husband or wife.

The settled property does not pay duty unless the net value thereof exceeds £1,000.

Aggregation is not to take place more than once as to property passing on any death.

Settlement estate duty in respect of a legacy settled by the will of the deceased shall (unless the will directs otherwise) be payable out of the settled legacy or personal property.

The duties now in force are as follows:—Estate Duty, Settlement Estate Duty, Legacy Duty, and Succession Duty.

The scale of duties are as follows:—

#### SMALL ESTATES.

##### Estate Duty.

	£	s	d
Under £100 gross value .. .. .	Free		
Above £100, but not exceeding £300 gross value	1	10	0
.. £300 .. .. .	2	10	0

ORDINARY RATE.  
(Finance Act, 1894)

*Estate Duty.*

			Per cent.		
			Net value £ s d		
Exceeds	£100, not exceeding	£500	..	1	0 0
"	500	"	1,000	..	2 0 0
"	1,000	"	10,000	..	3 0 0
"	10,000	"	25,000	..	4 0 0
"	25,000	"	50,000	..	4 10 0
"	50,000	"	75,000	..	5 0 0
"	75,000	"	100,000	..	5 10 0
"	100,000	"	150,000	..	6 0 0
"	150,000	"	250,000	..	6 10 0
"	250,000	"	500,000	..	7 0 0
"	500,000	"	1,000,000	..	7 10 0
"	1,000,000	"			8 0 0

The duty is due on the delivery of the account, or on the expiration of six months from the death, whichever happens first, and carries simple interest at the rate of 3 per cent. per annum, without deduction for income-tax, from the date of the death to the date when the duty is paid.

*Scale of Legacy and Succession Duty.*

The 1 per cent. duty for lineal ascendants and descendants is practically obsolete.

Brothers and Sisters	..	..	..	3 per cent.
Uncles and Aunts	..	..	..	5 "
Great Uncles and Aunts	..	..	..	6 "
Any other persons	..	..	..	10 "

Legacy Duty is payable on the principal value of all personal property (excluding leaseholds and legacies charged on or payable out of the proceeds of realty) given by will or devolving on an intestacy, provided that the deceased at his death was domiciled in this country. The following are the exemptions from legacy duty:—

- (a) The Royal Family.
- (b) Husband or Wife.
- (c) Estates under £100.
- (d) Estates whose gross value does not exceed £500, and upon which the fixed duty of £1 10s. or £2 10s. has been paid.
- (e) Where the net value of the estate (including property settled otherwise than by will) does not exceed £1,000, and the estate duty or fixed duty has been paid.

An annuity and a *donatio mortis causa* are both deemed to be legacies, and are subject to the proper duties.

Succession Duty is a duty payable on the principal value (a) of all gifts or successions to real estate, including leaseholds (b):—

- (a) It is now assessed on the principal value of the property after deducting the estate duty payable, and the cost of raising and paying the same.

Prior to the Finance Act, 1894, it was based on the value of an annuity for the life of the successor equal to the yearly income from the property.

- (b) It must be remembered that leaseholds pay succession duty.

The chief exemptions to succession duty are:—

- (a) The Royal Family.
- (b) Husband or Wife.
- (c) Lineal ascendants or descendants (the 1 per cent. duty).
- (d) Where principal value does not amount to £100.
- (e) Gross value of estates not exceeding £500, and fixed duty of £1 10s. or £2 10s. has been paid. This is exclusive of property settled otherwise than by the will of the deceased.
- (f) Where net value of such property does not exceed £1,000, and fixed or estate duty has been paid.
- (g) Successions to livings until sold.

As to personal or moveable property not situated in the United Kingdom, legacy and succession duty on such property are payable as follows:—

- (a) If the deceased was domiciled in the United Kingdom.
- (b) If it is comprised in an English settlement.
- (c) The share of a deceased partner who died domiciled in the United Kingdom. This will extend to real estate belonging to the partnership, with the exception of real estate not situated in the United Kingdom, legacies charged thereon, or the proceeds thereof, if it is directed to be sold.

If asked at an examination to prepare an Estate Account, and to show the duties payable, it is a good plan to look through the items given you and see if all of them can be included in the Estate Duty Account. If that is so, then the account will answer a double purpose—viz., Estate Duty Account and Estate Account. But if the question contains such items as realty in a foreign country, and debts that cannot be charged against the account, then if, as is generally the case in the Executorship papers, you are pressed for time, you might make an adjustment account as follows:—Carry to the credit of the Estate Account the balance of the Estate Duty Account, credit it with the value of any assets that are not liable for duty, such as foreign realty, debit it with any debts and expenses that the Commissioners will not allow to be charged, and the balance will be the balance of your Estate Account. If you have sufficient time, set out the account for probate in the prescribed form, and an Estate Account as well. When making up an Estate Duty

Account the executor must include among the assets the proportion of all income—capable of being apportioned—to the date of death, and charge the account with any interest, rent, &c., that may be due by the estate to that date.

If the date of obtaining probate is stated, then add 3 per cent. interest on the sum liable for duty to the amount payable, calculated from the date of death to the date of probate.

In preparing a Residuary Account you credit it with the balance of the Estate Account and debit it with the various legacies, &c., and show the relationship to the deceased of each legatee, &c., and the amount of duty payable by each.

The executor should keep a Cash Book and Ledger, and full detail should be shown on the face of each Ledger Account. By doing so he need only show the beneficiaries the Ledger, instead of having to show them both the Journal and the Ledger.

This is the plan recommended by Mr. O. Holt Caldicott, of Birmingham, to whom I was fortunate enough to be articulated.

In an estate that includes numerous tenancies it may be necessary to make use of a Journal, but not as a general rule.

The accounts should be kept on a cash basis—*i.e.*, "An account of all moneys come to the hands of the executors."

It is a convenience to have separate columns in the Ledger Account, showing the cost of the investments and the income derived from them, as the principal is easily taken out, and the income should always be balanced by the cash receipts.

An executor should have his accounts ready at all times for inspection by the beneficiaries.

Candidates for the examination should bear in mind the fact that the Rights and Duties papers now include trustees under wills and settlements. Within the last few years questions have been set on authorised securities, and on a trustee under a deed of appointment.

It may perhaps be inferred, therefore, that the word "trustee" does not relate only to trustees in bankruptcies, schemes, and deeds, but that it applies also to trustees under wills and settlements.

A deed of appointment under a will gives the person appointed the power of distributing the testator's property at some future date.

The Court, if an application is made to it by an interested party, considers the position of the person appointed, whether he is pecuniarily interested or not, or if he intends to make use of his position for his own benefit or that of his children.

Where there are young children or grandchildren to inherit, such a deed is frequently advantageous, as, by the time they come of age, circumstances regarding them may have

considerably altered, and the trustee can then use his discretion as to the disposal of the funds, knowing the exact position of affairs.

If the deed contains a clause directing that the income shall be accumulated, the terms of it must comply with the provisions of Thellusson's Act.

Before concluding, I will mention the main points in the Judicial Trustees Act, 1896.

The application to the Court for the appointment of a trustee under this Act may either be made by the person creating the trust, or by a trustee himself, or by a beneficiary. The Court may appoint a person either jointly with another person or as sole trustee, and, if good cause is shown, in place of existing trustees.

The Court can give any general or special directions they think fit to the trustee.

The Court fixes the remuneration of the trustee.

The accounts of the trustee must be audited once in every year and a report made thereon by a person appointed by the Court, and the Court can order an inquiry to be made into any transactions of a judicial trustee.

An important provision—which applies not only to judicial trustees under this Act, but to all trustees—is that, if a trustee is personally liable for a breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for having omitted to obtain directions from the Court, in the matter in which he committed such breach of trust, then the Court may relieve the trustee, either wholly or in part, from personal liability for the same.

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## Reviews.

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### Official Directory of the Chartered Accountants of Scotland.

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Edinburgh, 1905: William Blackwood & Sons.

The Year Book of the Scottish Chartered Societies, which is dated October last, is upon the same lines as the previous issues, and therefore contains the same advantages. We note with interest that no less than 115 members are stated to be in practice in London, against 284 at Edinburgh and Leith, and 326 at Glasgow. There are nearly ten times as many Edinburgh Chartered Accountants practising in London as there are in Glasgow, and more than four times as many Glasgow members in London than there are in Edinburgh, while at Aberdeen itself there are only 21 more members of the Aberdeen Society than are recorded as practising in London.

## Handbook of the Examinations of the Institute of Bankers in Scotland.

By JOHN G. JOHNSTON.

Edinburgh, 1905: The Darien Press, Bristo Place. Third Edition, revised and enlarged. Price 1s. net.

This is not, as the title might lead the reader to suppose, an official guide to the examinations of the Institute of Bankers in Scotland, but, for all that, the information provided appears to be very complete, and of some little interest. Both the Associates examination and the Members examination are dealt with, and there is a useful Appendix providing information on bankers' interest, discount, and commission, and other matters of interest.

## Personal.

MR. FRANCIS ATKIN, Chartered Accountant, announces that he has removed from Cobden Chambers, Pelham Street, to 1 Wheeler Gate (South Parade Corner), Nottingham, and that he is taking into partnership his son PERCY FRANCIS ATKIN, who served his articles with him and has recently passed the Final Examination of the Institute of Chartered Accountants with Honours. The practice will, in future, be carried on under the firm name of FRANCIS ATKIN & SON.

MESSRS. CARTER & Co., Chartered Accountants, of 33 Waterloo Street, Birmingham, announce that they have taken into partnership Mr. WARREN J. JONES, who has been associated with them for more than thirty years.

MR. THOMAS PATON, Chartered Accountant, of 23 Cheap-side, Bradford, announces that he has taken into partnership, as from 1st January 1906, Mr. CHARLES WILLIAM BOYCE, A.C.A., who has hitherto been in practice at Halifax Commercial Bank Chambers, Bradford, and that the style of the firm will remain THOMAS PATON & Co.

MR. ARTHUR E. PEASEGOOD, Chartered Accountant, has removed from 27 Scale Lane, to Crown Chambers, Land-of-Green-Ginger, Hull.

MESSRS. RAWLINGS & WILKINSON, Chartered Accountants, of Sanderland, announce that they have taken into partnership Mr. ARTHUR WALTON HOLEY, A.C.A., who served his articles with them, and has been with them for upwards of nine years. The firm's name will remain unchanged.

MESSRS. TILLY, BROWN & PEET, Chartered Accountants, have removed from 37 Queen Victoria Street, E.C., to 10 Coleman Street, E.C.

MR. W. T. WALTERS, F.S.A.A., of Yeovil, has been appointed by the Lords Commissioners of the Treasury a Public Auditor under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893.

MESSRS. WENHAM, ANGUS & Co., Chartered Accountants, 10 Walbrook, E.C., announce that Mr. REGINALD A. WENHAM, M.A., A.C.A., the eldest son of Mr. ARTHUR WENHAM, F.C.A., has been admitted as a principal of their firm.

## Meetings for the ensuing Week.

**Tuesday** — INSTITUTE OF CHARTERED ACCOUNTANTS. — Examination Committee, at 2 p.m.

**Wednesday** — INSTITUTE OF CHARTERED ACCOUNTANTS. — Finance Committee, 12.30 p.m.; Council Meeting, 2 p.m.

**Friday**. — LEEDS AND DISTRICT CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION. — Lecture, "Rights and Duties of the Officers of a Company," by Mr. R. A. Chadwick, M.A., LL.M.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Dec. 29th, was 73, viz.:— New Bankruptcy Proceedings published in the *London Gazette*, 28; Deeds of Arrangement registered, 45. The respective numbers in the corresponding week of 1904 were: Bankruptcies, 41; Deeds of Arrangement, 49—total, 90; being a decrease of 17. The total number of commercial failures recorded during the 52 weeks of 1905 was 8,943; the total number recorded in the corresponding 52 weeks of 1904 was 8,876, showing an increase of 67.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Dec. 29th, was 111. The number in the corresponding week of 1904 was 96, showing an increase of 15. The total number filed during the 52 weeks of 1905 was 8,441; the total number filed in the corresponding 52 weeks of 1904 was 7,905, showing an increase of 536.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week



ending Friday, Dec. 29th, amounted to £1,143,168, by way of addition to £872,371, previously issued by the same companies. The amount registered in the corresponding week of 1904 was £1,586,873, showing a decrease of £443,705. The total amount registered during the 52 weeks of 1905 was £77,795,353 (in addition to the issues in previous years by the same companies), as compared with £82,528,610, for the corresponding 52 weeks in 1904, showing a decrease of £4,733,257.

## The Profession in Scotland.

### COURT OF SESSION.

#### Edinburgh.—Second Division.

Before the Lord-Justice Clerk and a Jury.

Dec. 26-29.

**W. K. Webster v. James Aitken.**

*An Accountant's Slander Action.*

The trial was begun on the 26th ult. of the action in which William Keith Webster, accountant, Castle Chambers, 55 West Regent Street, Glasgow, sues James Aitken, writer, 220 St. Vincent Street, Glasgow, for £2,000 damages for alleged slander. The pursuer has been resident in Glasgow for the last twenty years. At first he carried on business as an insurance agent, and latterly as an accountant. His complaint was that during 1902-3, when conducting judicial proceedings on behalf of a client, the defender made statements affecting very seriously the pursuer's character and reputation as a business man, and this action was brought to vindicate his character and to recover damages for the aspersions cast upon him. The defender denied having slandered the pursuer, and maintained that any statements made by him were privileged and were true. Five issues were submitted on behalf of the pursuer. In the first the jury were asked to say whether, in July 1902, and in his office at 220 St. Vincent Street, the defender falsely and calumniously said he was fully satisfied that the methods of flotation employed by the pursuer were a fraud upon the public. The second issue is whether, on 12th or 13th June 1903, and in his office, the defender falsely and calumniously said that the directors of the Glasgow and Transvaal Options (of which the pursuer was one) were some of a gang who were preying on the public, and who had got up this and other companies for the purpose of

drawing salaries from them, and especially the pursuer, who got up companies for this purpose, and that the gang could not be trusted, meaning to represent that the pursuer was a person who cheated the public and promoted companies for the purpose of dishonestly drawing salaries therefrom? The third issue is whether, about the beginning of August 1903 the defender falsely and calumniously said that he was performing a public duty in exposing men who were not only preying upon the public, but lowering the whole commercial morality of the city of Glasgow? The fourth issue is whether, about the end of April 1903, the defender falsely and calumniously said that he had been instructed to raise two actions against the pursuer and the Glasgow and Transvaal Options, Lim., and that although it had been held forth by the pursuer that that company held a number of options, they were not in possession of a single one, and that the whole thing was a fraud from beginning to end, meaning thereby to represent that the pursuer had been guilty of the fraud? The fifth issue is whether, in the month of April 1903, the defender falsely and calumniously said that the pursuers and others connected with the New Pneumatic Ordnance Syndicate, Lim., were perpetrating fraud upon the public, and that the whole matter of that company was a fraud, and that the pursuer and his friends were a parcel of swindlers? The following counter-issues are submitted by the defender:—(1) Whether the pursuer promoted or assisted in promoting the following companies:—The Glasgow and Transvaal Options, Lim., the Glasgow Mexican Options, Lim., and the New Century Pneumatic Ordnance Syndicate, Lim., and whether the methods employed by the pursuer in the promotion of these companies, or some of them, were a fraud upon the public? (2) Whether the pursuer promoted or assisted in promoting the following companies, or some of them, viz.:—The Glasgow and Transvaal Options, Lim., the Glasgow Mexican Options, Lim., the New Century Pneumatic Ordnance Syndicate, Lim., the English and Scottish Industrials, Lim., the Spanish Pioneers, Lim., the Pontevedra Tin Mines, Lim., the Mediterranean Mines Development Corporation, Lim., the Moraleja Gold Bearing Alluvial Concession, Lim., the Tras Os Montes Development Corporation, Lim., and the Rex Metal Syndicate, Lim.? Whether these companies, or some of them, have done no business and have paid no dividends? Whether the companies, or some of them, were, in the knowledge of the pursuer, companies without substance and without the means of doing genuine business? Whether, nevertheless, the pursuer, by himself, or through others, endeavoured to induce and did induce numbers of persons to take shares in them or some of them? Whether, in assisting to promote these companies, or some of them, the pursuer sent, or caused to be sent,

circulars and letters to a number of persons, which contained false and fraudulent representations for the purpose of inducing such persons to take shares in the companies? And whether the companies, or some of them, were promoted by the pursuer for the purpose of dishonestly drawing salaries and other profits therefrom? (3) Whether the companies mentioned, or some of them, have failed to do any business, and have paid no dividends, and were from the beginning, to the pursuer's knowledge, companies of no stabilities or substance, and without the means or prospect of doing genuine business, and whether the pursuer in this knowledge induced numbers of persons to take shares in the companies or some of them? (4) Whether, in assisting in the promotion of the Glasgow and Transvaal Options, Lim., the pursuer in the early part of 1902 drew up and issued from his office to a number of persons a document which falsely and fraudulently represented that Mr. David Fraser had the right to about 100 options in the Transvaal, which he had agreed to transfer to the company, the fact being, as the pursuer well knew, that Mr. Fraser had not acquired right to any such options? Whether that company has failed to pay a dividend and has done no real business, and was from the beginning, to the knowledge of the pursuer, a company without substance or the means of doing any genuine business, and was promoted by the pursuer in that knowledge? (5) Whether the New Century Pneumatic Ordnance Syndicate has failed to do any business, and has paid no dividend, and has been wound up, and was from the beginning, in the knowledge of the pursuer, a company with no substance or stability, and with no means or prospect of success? Whether the pursuer in that knowledge, nevertheless, by himself or through others, endeavoured to induce, and did induce, numbers of persons to take shares in the company? Whether, in connection with the company, the pursuer issued a circular, dated 3rd August 1901, containing false and fraudulent representations for the purpose of inducing an erroneous belief in the stability of the syndicate in the minds of persons reading them? And whether the pursuer fraudulently, in the knowledge that the syndicate had no substance or stability, disposed of a large number of shares received by him as vendor to a number of members of the public?

On the 29th ult. the Lord-Justice Clerk, in charging the jury, said that was a serious case indeed, as serious a case as could come before a civil jury. If one view of the case were taken it involved the strongest possible results—practically ruinous results to the party who was unsuccessful. The defender was stated to have vindicated himself against having uttered certain slanders, but he took upon himself the burden of proving that if he uttered them they were not slanderous? While the case was necessarily one

of a very serious nature indeed for the pursuer, that must make the jury careful not to be deterred from doing their duty if they saw it to be their duty to hold that the pursuer offended in the particulars set forth in the counter issues. If the offences were proved, it was their duty to say so, however painful such a duty might be. On the other hand, if the defender had failed to make out these allegations of his, the pursuer was entitled to their verdict on the counter issues. Here they were dealing with the case of a law agent who was inquiring on behalf of clients into companies promoted by the pursuer, and the law was that if he gratuitously made statements affecting the pursuer's character which were false he would be answerable; but he would not be answerable as a slanderer if he merely put before these people the allegations that were made in a litigation in which he was employed, and asked them about these allegations. The pursuer's witnesses said that the defender volunteered these statements not as statements in precognition or with regard to the case with which he was dealing, but as statements of his own. The defender stated that that was not so. Therefore they had to consider first the question whether the defender was proved to have said these things independently, or in the course of his duty as an agent making inquiries. If he did the former, he would not be protected by the law. If they found that the pursuer had failed to make out his issues they would hardly trouble about the counter issues; but if they thought the pursuer had succeeded in that they would then consider the counter issues. These counter issues raised a serious matter for consideration. That serious question was this—Was the pursuer not merely a company promoter, but was he a company promoter who was engaged in getting up companies out of which he had to make a profit, without any reasonable ground for believing that there was anything really substantial in them at all? It would appear that for a good many years company promoting had been his business. To say that a man was a professional company promoter was not sufficient to infer that he was unfair or dishonest. There were some people who had such tremendous confidence in their own abilities to accomplish anything that they would take up any business in the perfect belief that they had the brains and the will and the power to carry it through to success. It often took a good many years to convince them that they were not so clever as they thought they were. If it were the jury's opinion that Mr. Webster was in that position then they would need to go into particulars to see whether, being a company promoter, he did so act as a company promoter as to come under the ban of the allegations which were made in these counter issues. On the one side there was this to be said in his favour, that they did not find that people with whom he had dealings, or people who had lost money by him, wished to impute to him any-

thing of the kind. On the other hand, that did not dispose of the question now that it was raised and had to be decided upon the evidence. It was a remarkable thing that there was a long string of companies promoted by the pursuer, none of which had come to anything except loss. It was for the jury to consider whether they could see any trace of any of them ever having had a reasonable chance of success. If a man were engaged in promoting companies, and if that were the only way of making his livelihood, he must go on in it, and he might occasionally hit upon a good thing. But the question was whether in going on and taking up these companies, and the way he conducted himself while carrying them on, he was guilty of what could be described in the words of these issues. It was certainly very difficult, indeed, to see how such companies could be brought into existence and carried on to a stage, and money taken from the public for the purpose of carrying them on by anybody, without there being very serious imputations against them. Some of the circumstances were very striking, perhaps none more so than this, that Mr. Webster, who got very large sums allocated to him in shares fully paid up in these companies which he promoted, when it was necessary that these companies should be set up into a working position by getting honest money from the public if he could obtain it, got considerable sums of money for those shares which he had obtained for nothing. The proper course necessarily would have been if one established a company of that kind and went to the public for shares, to present them with the shares which were intended to be allocated, independently of vendors' or promoters' shares. In point of fact that did not seem to have been done. That was a very serious matter indeed. If it were true that the letters which Mr. Webster sent out to numerous people for the purpose of getting them to buy shares—whether his own or the shares which were to be put upon the market by the company—declared that capital had been promised over and over again, or declared that practically the capital was all subscribed, and if these were not true statements, his Lordship was afraid it was very difficult to hold that he was not acting in a fraudulent manner; still more, if he said that the shares were selling at a premium, when in point of fact they were not selling in the market at all. That would be a serious matter indeed, if the shares he spoke of were shares which he himself had got as part of his promotion advantages. If what the Solicitor-General maintained was the fact, then it was very difficult to say that these were honest companies, promoted in an honest way, and for honest purposes. The jury must take the whole circumstances into consideration, must keep in view the issue which was involved, and must do their duty, in a case which was serious for both parties, most of all for the pursuer.

The jury retired at twenty minutes to four o'clock, and returned in twenty-five minutes with a verdict for the defender on all the issues.

### Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
„ 21st „ .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th „ .. .. .	3%
„ 28th „ .. .. .	4%

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS

AND

ACCOUNTANCY THROUGHOUT THE WORLD.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

**Thomas Abercrombie Welton, F.C.A.**

THE subject of our portrait this week is so well known to both the past and the present generation of accountants that few words of ours are necessary to introduce him to our readers; nevertheless, we should like to say those few words. Mr. WELTON made a tentative start in the accountancy profession

in 1857 under the ægis of Mr. QUILTER, but it was not till 1866 that he permanently entered the office of QUILTER, BALL & Co. Educated in that celebrated school of accountancy, Mr. WELTON early showed signs of that great ability which is so conspicuous in him at the present day, and which has raised him to the position of head of an historic firm.

During the early existence of *The Accountant* newspaper he was a frequent and willing contributor to its columns, and he could write a brilliant leader, straight off the reel—to use a vulgarism—which required merely the most trivial verbal correction in proof. He has probably contributed more papers on accountancy topics than anyone else, and has, moreover, been a voluminous writer on statistical topics—a field he makes peculiarly his own—to many of the leading newspapers. He has been connected with the liquidation of many great concerns, demanding qualities of the highest administrative power; probably amongst the largest being the Oriental Bank Corporation.

He was Secretary of the old Institute of Accountants, and he occupied the position of Vice-President of the Institute of Chartered Accountants in 1890-1, and became President the following year.

He has from the first been an active member of the Savings Banks' Inspection Committee—a committee appointed under the Savings Banks Act, 1891—of which body he has since become the Vice-Chairman.

Always a hard worker, he still assists the

students of the present day with his abundant experience—in fact, his advice is rarely withheld from those who seek it.

Sheer indomitable perseverance, coupled of course with consummate ability, has kept Mr. WELTON'S name prominent, not only before his profession, but also before the commercial public, for the past thirty years.

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### Directors v. Auditors.

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THE action of the directors of the Straits and General Development Company, Lim., towards their late auditors, Messrs. CREWDSON, YOUATT & HOWARD, to which attention has been drawn by some of our contemporaries, calls, we think, for fuller consideration than it has yet received.

It appears that in the accounts of the company for the year ended 30th June last, which were submitted to the shareholders at the ordinary general meeting held upon the 11th ult., the auditors issued a combined certificate and report, which appeared at the foot of the printed Balance Sheet, in the following terms:—

"We report that we have examined the Balance Sheet of your company at 30th June 1905, with the books and vouchers.

There are, in the hands of two of your directors, as trustees for the company, certain stocks and shares which form part of the assets of the company. These should, in our opinion, be brought into the Balance Sheet.

The value of the investments shown in the Balance Sheet, and referred to in our last report, shows a depreciation amounting to £25,469 5s. In other respects, we are of opinion that such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the company's affairs as shown by the books.

In accordance with the Companies Act, 1900, we certify that all our requirements as auditors have been complied with."

We venture to think that few of our readers will be disposed to question the general proposition that, when investments are held in the names of directors as trustees for a company, it is desirable that such investments should be duly recorded in the books of that company, in order to avoid any possibility of their being overlooked owing to a change of *personnel*. Messrs. CREWDSON, YOUATT & HOWARD, in the report referred to above, go perhaps a little further in expressing the opinion that these assets should be brought into the Balance Sheet. They might conceivably represent a legitimate Secret Reserve, they might have no appreciable value, or they might—while admittedly of value—have been acquired under such circumstances as to make it undesirable that any credit should be taken therefor pending an actual realisation. Speaking upon quite general grounds, therefore, we think it conceivable that under some circumstances exception might perhaps be taken to the view expressed by the company's auditors at the foot of its published Balance Sheet; but whatever might be argued under this heading appears to be nullified by the statement made by the Chairman at the meeting, as reported in *The Financial Times* of the 12th ult., that “there was no objection to “be made to the remark by the auditor that he “could see, and there was no objection to “adding a foot-note in this year's accounts “regarding this matter as suggested.” If we are to take the Chairman at his word, it is clear that this is not a case of a misunderstanding between directors and auditors upon the lines of the *Kynoch* case, which will doubtless still be fresh in the minds of our readers. Regarding the matter in the only way possible to an outsider—that is to say, as a question of general theoretical principle—we may admit

that Messrs. CREWDSON, YOUATT & HOWARD may have exposed themselves to the hostility of the directors by incorporating in the certificate required by statute to be printed at the foot of the published Balance Sheet a statement which would appear more properly in the unprinted report which has to be read to those shareholders who attend the general meeting. But the admission of the Chairman (Mr. ALFRED GAUSSEN) estops the board from adopting that attitude.

So much for the undisputed facts. Now for the more obscure, and perhaps for that very reason the remarkable, points in connection with the whole matter. *The Financial Times*' report goes on to say that on the motion of the Chairman, seconded by Mr. GIBSON, the auditor, Mr. HARRY PREEN, was reappointed. So far as we are aware, there is no practitioner of that name, and we are therefore driven to the surmise that Mr. HARVEY EDWARD PREEN, F.C.A., is referred to. But, whatever may be the exact identity of the gentleman appointed by resolution of the company in general meeting assembled, it is obvious that the expression “reappointed” is inaccurate, for up to the date of such meeting the post was held by Messrs. CREWDSON, YOUATT & HOWARD. We may add—and we think that the circumstances are such as to render their publication desirable—that Messrs. CREWDSON, YOUATT & HOWARD inform us that up to the last moment they had no information that any other auditor would be put forward in competition with themselves, and that no opportunity whatever was afforded them of explaining their attitude or of protesting against the procedure adopted. If the circumstances be as stated above, we venture to think that Mr. HARVEY PREEN would be one of the very last practitioners

to lend himself to such tactics on the part of directors; but, of course, a practitioner is always liable to be placed in a false position by excessive zeal on the part of his friends. We have before now stated our view that the directors of a company, if they find that they cannot work amicably with the auditor, are justified in using their votes as shareholders to secure the appointment of another auditor with whom they can work; and so long as the law does not exclude directors' votes on a resolution for the appointment or reappointment of an auditor, that proposition is, of course, unassailable. There is, however, a broad distinction between what may be described as a frontal attack and what in comparison may perhaps be best described as a flank attack, and we very much question whether a resolution "reappointing" as auditor a gentleman who has not previously held that position is valid. However that may be, it is in the highest degree undesirable that shareholders should be allowed to vote on such a question without a full knowledge of the facts; undesirable that any member of the board should either propose or second a resolution for the appointment or reappointment of an auditor; and most undesirable that a practitioner of known repute should be proposed for such a position without his consent having been first obtained, after the whole of the circumstances have been disclosed to him. It is not surprising that under the circumstances Messrs. CREWDSON, YOUATT & HOWARD should feel aggrieved at what has taken place, and if Mr. HARVEY PREEN cares to take advantage of these columns in order to explain his position with regard to the matter, we feel sure that any communication he may have to make will be received with interest by all of our readers.

### The Admission of Proofs in Bankruptcy.

THE correspondence which appeared in these columns last month under the heading of "The Employment of Solicitors by Trustees in Bankruptcy" has been brought to a somewhat abrupt conclusion because the parties most nearly concerned appeared desirous of ventilating in these columns alleged grievances which, so far as they could be said to be of interest at all, were certainly not of general interest to the profession. We had therefore, albeit somewhat reluctantly, to bring the correspondence to a close; but the main issue out of which it arose yet remains to be considered.

Regarded in general terms—that is to say, from the point of view which alone is of general interest—the crux of the question appears to be as to whether a creditor in a bankruptcy whose claim is disputed is entitled to such control of the proceedings as the nomination of a trustee and a place on the committee of inspection of necessity involve. Stated quite generally it is, of course, clear that the whole policy of the Bankruptcy Acts is to afford creditors an opportunity of managing affairs in their own way, so soon as their views with regard to the matter can be ascertained. But, in the nature of things, if it were first of all to be officially ascertained beyond all possibility of subsequent dispute who were creditors, and what were their respective interests in the estate, the delay involved would be such that by the time creditors were able to take the matter out of the hands of the Official Receiver, and place it under the control of their own trustee, it would as a rule be far

too late for such trustee to perform any useful work.

That being the position of affairs, a sort of working compromise, such as that which underlies practically all British jurisprudence, is provided, which in the main if not ideally perfect, at least works sufficiently well for all practical purposes. Paragraph 14 of the 1st Schedule to the Bankruptcy Act, 1883, provides that: "The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor shall be admitted or rejected, he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained." Obviously, therefore, the proper time for any creditor to object to the appointment of a trustee being influenced by a doubtful proof is before voting takes place for the appointment of such trustee. The chairman—*i.e.*, the Official Receiver—will then mark the proof as being objected to, and the question as to who shall be trustee will then be ultimately determined by the eventual decision of the Court with regard to such doubtful proof. Or, if the Official Receiver goes further, and for purposes of voting rejects the said proof, then the person claiming to be a creditor may appeal to the Court, and whatever form the procedure may take, the control of the proceedings, if the proof in dispute be of sufficient amount, will be entirely determined by the attitude of the Court towards the proof in question. It would be difficult to devise an arrangement which more nearly complies with the essential requirements of the situation—namely (1) to give control of the proceedings to

those most heavily interested, and (2) to avoid undue delay in the carrying out of their wishes.

But if the opportunity of objecting to a proof at the first meeting, or at any adjournment thereof, be allowed to slip, whatever may be the merits of the case, it is clearly not desirable in the interests of creditors generally that the whole administration of the estate should be brought to a standstill by the obstructive attitude of the minority at such first meeting. The trustee, once appointed, should be allowed every reasonable facility to discharge his duties, and should obviously receive the full support of the committee of inspection in so doing. It is true that there is no express enactment to this effect, but surely nothing of the kind is necessary to indicate so obvious a duty on the part of the committee.

In some cases, of course, circumstances not disclosed at the first meeting may subsequently transpire which tend to throw a doubt upon the admissibility of proofs then admitted for purposes of voting. That, however, is another matter, for whatever may have been the decision of the Official Receiver with regard to the admission or rejection of proofs for voting purposes, it is one of the statutory duties of the trustee to adjudicate upon proofs of debt for purposes of dividend. So that every possible opportunity may be given for objections to be raised, it is probably undesirable that the trustee should proceed to admit or reject proofs with undue haste; and indeed there would appear to be little object in his so doing until the period had been reached when he was about to declare a dividend, when, of course, it would be necessary to determine with accuracy who was entitled to participate therein, and to what extent. Clause 25 of the 2nd Schedule to the 1883 Act provides, it



seems to us, an effective remedy against the trustee who negligently or collusively admits a proof for more than the proper amount. It provides that "The Court may also expunge "or reduce a proof upon the application of a "creditor if the trustee declines to interfere in "the matter, or in the case of a composition "or scheme upon the application of the "debtor."

This, it seems to us, stops up the only loophole left by the previous safeguards. It is of paramount importance that, whatever happens, the administration of the estate should not be stopped by any dispute as to whether, had the first adjudication of proofs for voting purposes been different, some different trustee might conceivably have been appointed; but if the trustee so appointed declines to interfere in the matter any creditor may apply to the Court, and the latter will then deal as it may think right with the proof in dispute.

It may be thought that this remedy is not sufficiently drastic to meet the requirements of the case, and, did matters stop here, it might conceivably be argued that in certain cases dishonest debtors might secure the lodgment of collusive proofs put in by friendly creditors, and thus secure the administration of affairs by a friendly trustee. But, for what it is worth, it may be pointed out that the Act has been drawn so as to fully meet the requirements of even this remote contingency. Section 86 (1) of the Bankruptcy Act, 1883, provides that "the creditors may by ordinary resolution at "a meeting specially called for that purpose, "of which seven days' notice has been given, "remove a trustee appointed by them, and at "the same or any subsequent meeting appoint "another person to fill the vacancy as herein- "after provided in the case of a vacancy in the

"office of trustee." If, therefore, at any time it should be found that on a final adjudication on the proofs the trustee in possession does not *bonâ fide* represent a majority of the creditors whose claims have been admitted to rank for dividend, the majority can remove him and appoint their own nominee in his stead.

### **The Audit of Municipal Accounts.**

OUR contemporary *The Municipal Journal* has, as we rather expected, something amusing to say on the subject of the recent utterances of the President of the Local Government Board, to which we drew attention in a leading article last week. Our contemporary assumes—for what reason we know not—that Mr. BURNS will throw all the weight of his official position in favour of an official audit, and says: "With Mr. JOHN BURNS at "the Local Government Board we could "accept the central audit without doubt or "misgiving, but we have to legislate for other "men and other times. In the hands of Mr. "GERALD BALFOUR the central audit could be "used with disastrous effect against municipal "enterprise." It is, of course, quite conceivable that these remarkable assertions are made under a complete misapprehension as to what an audit, properly so called, consists of. Such a misapprehension would no doubt be not altogether surprising, for we do not appear to have yet succeeded in educating our contemporary up to a just appreciation of the true position of affairs. To paraphrase the words of a well-known Judge, dealing with the subject of the liabilities of auditors, "it is nothing "to the auditor whether or not dividends are "paid out of capital, whether the business of "the undertaking is prudently or imprudently

"conducted. His business is confined to "ascertaining the actual state of affairs." All proper audits, whether of companies registered under the Companies Acts or of concerns otherwise constituted, must be founded upon this same basis; and if they were so founded it is obvious that the only possible objections that can be raised to any form of audit are (1) that those responsible for the business management do not desire the true state of affairs to be generally known; or (2) that they do not admit the competence of those deputed to perform the audit to discharge their duties. Our objection to official audits comes chiefly under the second of these two headings, but is, of course, supplemented by the reflection that as at present constituted the statutory official audit does not give the auditor adequate powers of investigation.

Our contemporary, however, would appear to find no fault whatever with an official audit so long as Mr. JOHN BURNS is at the head of affairs, but considers that it would have a disastrous effect upon municipal enterprise if Mr. GERALD BALFOUR were there instead. We may, we think, fairly take the two names as types, and say that our contemporary would favour an official audit while conducted upon instructions issued by an advanced progressive municipalist, but would regard an audit conducted under the supervision of anyone of more conservative opinions as disastrous to municipal enterprise. It would be of the greatest possible interest to know whether our contemporary considers that the personality of the President of the Local Government Board is going to have any material effect upon the capacity of the permanent officials. Or whether its point of view is not dictated rather by the comfortable assurance that with such instruc-

tions as would be issued to District Auditors under the ægis of a progressive President of the Local Government Board the so-called audit would be conducted upon an entirely different principle to that which we have pointed out as being the legal interpretation of an audit, and would not provide those interested with a complete statement of the whole facts of the case. It has, of course, all along been our contention that legitimate municipal enterprise is hampered by what may euphoniously be described as excess of zeal on the part of the extreme wing of its advocates, who—for some reason which, we admit, is not altogether clear to us—are markedly unfavourable to a full disclosure of the facts. This view would certainly appear to be endorsed by our contemporary, however unconsciously that may be. For our own part we do not propose to take sides upon the broad question of municipalisation *versus* private enterprise (or monopolies, as its opponents prefer to call it), but we venture to think that those sane business men who are in favour of municipalisation will admit that our consistent contention that the true facts of the case should in all cases be made known, and be duly attested, is not inimical to such forms of collectivism as are upon that sound financial basis which is necessary for the continued success of any kind of business.

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### Weekly Notes.

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**Bankers'  
Clearing House  
Statistics.**

Mr. R. Martin Holland, the Hon. Secretary of the London Clearing House, has issued his annual report, and the following Table, which we cull therefrom, shows the amount of bills, cheques, &c., paid at the Bankers' Clearing House during the years 1904 and 1905:—

—	1905	1904	Increase
	£	£	£
Grand Total .. ..	12,287,935,000	10,564,197,000	1,723,738,000
Town Clearing Total	11,355,250,000	9,677,988,000	1,677,262,000
Country Cheque			
Clearing Total ..	932,685,000	886,209,000	46,476,000
Fourths of the Months	497,070,000	445,281,000	51,789,000
Consols Settling Days	638,783,000	597,160,000	41,623,000
Stock Exchange Ac-			
count Days.. ..	2,070,622,000	1,536,586,000	534,036,000

The largest amount cleared in one day in 1905 was £102,780,000, on 15th March, and the smallest total was on 9th September, £23,771,000. All the figures, whichever way they are turned and twisted, are in excess of 1904, and in most cases records have been established.

#### The Year's Tragedies.

According to the usual statistics of failures and registration of bills of sale during 1905, which have just been published, the number of bankruptcies in England and Wales was 4,800, being an increase of 288 over 1904, and the deeds of arrangement amounted to 4,154, or 206 less than the previous period. The number of bills of sale registered in 1905 was 8,430, being 515 in excess of the 1904 figure. The increase in the number of companies wound up was 73, bringing the total to 1,647. Towards the end of next year we shall be interested to note what the Inspector-General in Bankruptcy has to say about the recrudescence of officialism.

#### Business Law.

The recent instalments of *The Financial News'* series of articles are no less interesting than their predecessors, which we have noticed in these columns:—

(1) Where a secured creditor values his security, and the property afterwards increases in value, the creditor is entitled to amend his valuation and proof. The facts were, briefly: In 1895 a scheme of arrangement in the bankruptcy of A., which had been accepted, fell through owing to M., a creditor, who had been included in the statement of affairs as "secured," lodging a proof after assessing the value of his security at one-half the amount of his debt. A dividend of 1s. in the £ was ultimately paid, and in January 1903, consequent on death of debtor's wife, the security held by M. increased in value, and in May of the same year he applied to the trustee in the bankruptcy to allow the amendment of the proof by placing the security at its full value. Held, he was entitled to do so. (*In re Fanshawe; ex parte Marchant.*) The full report should be studied. It

seems a pity that the trustee did not exercise his right of redemption, although possibly the ultimate value of the security could not be foreseen.

(2) Held, in *In re Hasluck v. Rose*, that a power to release a power of appointment is not a power in, over, or in respect of, property within the meaning of Section 44 (ii.) of the Bankruptcy Act, 1883, and that a trustee in bankruptcy has no power to release it.

(3) *In re FitzGeorge; ex parte Robson*, is rather peculiar on account of the reported facts. A., a director of a limited company, gave to B., for good consideration, his written guarantee "for the regular payment of the interest payable in respect of the said debenture until the repayment by the said company of the principal sum of £3,000 due thereon." The debenture held by B., which was the subject of this guarantee, was a floating charge, and carried interest at the rate of 78 per cent. per annum, payable quarterly, and one of the endorsed conditions provided that the principal sum should immediately become payable if the company made default for twenty-eight days in the payment of any interest thereby secured, or if the company went into liquidation. In 1893 default was made as regards interest, and thereupon B. enforced his debenture, which realised £933. In 1894 the company went into liquidation, and was dissolved in 1895. In November 1902 A. was adjudicated bankrupt, and B. lodged a proof against his estate for interest due on the debenture to that date, and also claimed that an estimate of the future liability of the debtor to pay interest should be made, and a proof for the same admitted. The trustee in bankruptcy rejected the proof on the ground that the debtor was no longer liable under his guarantee, as the company had been dissolved. Held that, notwithstanding the dissolution, B. was entitled to prove in A.'s bankruptcy for the estimated value of the future interest payable under the guarantee.

(4) The executive council of the South Wales Miners' Federation declared a general holiday on a certain day, and accordingly the miners left off work without first giving notice to their employers, and in breach of their contracts of employment. There was no malice or ill-will on the part of the Federation, which had acted honestly with a view to keeping up the price of coal by which wages were regulated. Held by the House of Lords, supporting the decision of the Court of Appeal, but reversing the judgment

of Mr. Justice Bigham, that an action for damages lay by the employers against the Federation and its officers, no justification for their action being shown. (*South Wales Miners' Federation v. Glamorgan Coal Company.*)

**Colliery Shortworkings.** The question raised by our correspondent "Tonnage Rent," whose letter we reproduced last week, is one of some interest, and we shall be glad to hear what other of our readers think with regard to his view on the matter.

**Establishment Charges.** It would, we feel sure, be a convenience to our readers, as well as to ourselves, if correspondents would be good enough in all cases to refer to the dates or pages of the issue in which previous communications had appeared. With regard to the further letter from our correspondent "F. L. D.," supplementing the data provided in that which appeared in our issue of the 23rd ult., we can only suggest that the question as to whether or not interest on capital invested and depreciation on buildings should be included in establishment charges for the purpose of Cost Accounts depends entirely upon the system of costing adopted, and the results which the Cost Accounts are expected to tally with. *Prima facie* we should say that depreciation ought to be charged, and that interest on capital ought not to be.

**Delays in Bankruptcy Procedure.** At a meeting of creditors held at Bankruptcy Buildings on the 21st ult., a creditor complained that it had taken him nearly three months and cost him close upon £85 to get a receiving order against a firm of foreigners who, six weeks before calling their creditors together, had obtained goods to the value of £900. He stated that he considered it was nothing less than a scandal that so many difficulties should be placed in the way of creditors who desired to have their debtors publicly examined in the Bankruptcy Court. We know nothing whatever of the case referred to, nor of the circumstances which led up to the granting of the receiving order. We gather, however, that the debtors had convened a meeting of their creditors, which suggests the existence of a prior deed of arrangement, and recent decisions clearly show the desirability of careful inquiry by the Registrar before granting a receiving order to creditors who have dallied

with a private arrangement in the first instance. Such inquiries necessarily involve delay. As to the allegation that it had cost £85 to obtain the receiving order, that, of course, cannot be strictly accurate unless there has been an appeal from the Registrar's decision. A petitioning creditor might, however, of course, easily have to pay more than £85 in order to obtain a final judgment if his debt were disputed. A debtor desirous of gaining time would naturally throw every obstacle in the way of an early judgment; but, although a frivolous defence is in itself misconduct, obviously even an admittedly insolvent debtor has a right to protect his estate from executions put in by judgment creditors whose debts are disputed. There are undoubtedly numerous imperfections in the existing bankruptcy procedure, but delay in the obtaining of receiving orders is, we think, hardly one. A far more serious ground for complaint is the delay frequently experienced in securing an order of adjudication after the necessary resolution has been passed at a first meeting of creditors.

**Secret Profits.** A curious and unusual case was decided by Sheriff Davidson at Glasgow recently under the following circumstances: The defender had been a director and the factory manager of the plaintiff company, having entered into an agreement to devote his exclusive attention to their business under a penalty of £100. The pursuers' claim was for an accounting for alleged secret profits—the defender having entered into a contract with them in another man's name for the repayment of certain overcharges—or alternatively for £850 in addition to the £100 penalty provided by the agreement. After a three days' proof the Sheriff held the defender liable in the stipulated penalty and for any profit which, on the taking of an account, the pursuers could prove that they had been deprived of by diversion of work, but not for both, the £100 being held as a minimum penalty in the event of the damages on inquiry not amounting to that sum.

**Company Registrations in 1905.**

According to *The Financial News* the total number of registrations of new companies during the past year was 3,980, as against 3,489 in 1904. The number for the month of December last is given at 405, as against 356 in November and 374 in December 1904. The aggregate nominal capital shows an equally satisfactory increase, being approximately 110 millions, against 84

millions in 1904. In Guernsey, thanks to the attention that has been given to the matter of late, only 38 new companies were registered last year, against 61 in 1904.

**Blank Transfers.** An unusual case came before Judge Lumley Smith, K.C., in the City of London Court, last week, where the plaintiff claimed £45 or the return of two share certificates, together with damages for their detention or in the alternative for their conversion. It appeared that the plaintiff had borrowed money from the defendant on the security of the shares in question, and had deposited the certificates with the defendant along with a transfer in blank. The loan was subsequently repaid, but the shares were not returned, and it was stated that the transfer had been filled up in the name of the defendant's brother. His Honour held that if the transfer had been executed in blank and had subsequently been filled up with the name of the defendant's brother, then the shares in fact belonged to him, and that, therefore, the defendant could not be called upon to return them to the plaintiff. He, however, gave judgment for the amount claimed, with costs, which represented the par value of the shares.

**Receivers and Repairs to Mortgaged Property.** Our contemporary *The Solicitors' Journal* states that there seems to be a disposition nowadays for mortgagees, instead of entering into possession in order to execute repairs to the mortgaged property, to appoint a receiver and direct him to do the repairs, and that there is a tendency to push this course beyond its legitimate limits. It ought not to be overlooked, our contemporary says, that there is only provision authorising such expenditure out of the rents and profits received and remaining after payment thereof of all payments that are preferential to the mortgagee's claim, and even then the repairs must be proper and necessary and directed in writing by the mortgagee. A receiver has thus no right to execute any repairs without the written instructions of his mortgagee, nor to borrow money for the purpose of executing such repairs. In exceptional cases, therefore, where the state of the property renders the prompt execution of extensive repairs essential, the proper course would appear to be in all cases to apply to the Court for the appointment of a receiver rather than to rely on a power to make such appointment contained in the deed.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### Union of Chartered Accountant Student Societies.

*(To the Editor of The Accountant.)*

SIR,—Referring to the letter over the signature "S." in your issue of last week, in which the writer states that he would be pleased if the success of Messrs. Price and Lanham in their work for the Union of Chartered Accountant Student Societies received a little more acknowledgment than a mere vote of thanks, I would call attention to the report of the last meeting of the Joint Committee of the Union, which is published in the same issue.

It will be seen that others were of the same opinion as "S.," and they acted upon it in the manner described in the report.

Yours faithfully,

G. H. REDFERN,

London, 3rd January 1906.

Hon. Sec.

### The Rights of Partners *inter se*.

*(To the Editor of The Accountant.)*

SIR,—I have read with interest Mr. Clare Smith's able lecture upon this subject, but I remain unconvinced in spite of its plausibility. When our Judges were in a difficulty some time ago, they got out of it by distinguishing capital losses from revenue losses. It may be that we shall have to do the same. The principle applies to companies and to income-tax accounts; why not to the rights of partners *inter se*?

Section 24 of the Partnership Act, 1890, says: "In the absence of agreement to the contrary . . . all the partners . . . must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm." Does this refer to both capital and revenue losses in the sense of creating a distinction between them, and in what sense must we understand the word "equally"? Sir J. Pollock, in his *Partnership*, quotes a case (*Darby v. Darby*) that the general

rule has been stated thus: "On the dissolution of a partnership all the property belonging to the partnership shall be sold, and the proceeds of the sale, after discharging all the partnership debts and liabilities, shall be divided among the partners according to their respective shares in the capital"; which differs from what I understand Sir J. Pollock to say to-day, and if this case is null by reason of the Act of 1890, why does he quote it?

Section 44 (a) one must read somewhat as follows:—There being losses and no profits, the losses must be first paid out of profits which do not exist; and there being a deficiency of capital instead of a surplus, such deficiency shall be first paid out of the non-existing surplus. And if these two non-existing funds have not sufficed to extinguish the loss, each partner shall contribute in proportion as he would share in profits!

There is nothing in *Garner v. Murray* to show whether the loss of £635 is a revenue loss or a loss on realisation, and all your correspondents have ignored the point, except Mr. Dawson, who states it from both points of view in his illustrations, but does not refer to it. *But what is left is not profit, it is the remains of the capital embarked in the business. The loss is the difference between that sum (£1,916) and the capitals, and it is this difference which must be distributed between the partners in order to ascertain the interest of each in the assets ultimately divisible.* And that proportion will depend upon this, that everything arising on Revenue Account (as per Professor Dicksee's golden rule quoted later) shall be divided in profit-sharing proportions; but losses on Realisation Account, being losses of capital and not of revenue, must be divided in proportion to the capital. The insolvent partner, having no capital, gets nothing, so that the *ad infinitum* absurdity referred to by one of your correspondents does not exist.

Professor Dicksee says: "The golden rule to be observed in all these cases is that, in order to adjust the accounts of the various partners, it is invariably necessary to ascertain the final balance of profit (or loss) up to the date of distribution, and to credit (or debit) each partner with his respective share in the proportions in which it has been agreed that profits (or losses) are to be borne. This is entirely irrespective of the amount of capital or loans that each partner may have put into the business."

Mr. Dawson laid the case clearly by means of his illustrations, but he did not complete it. He gives Garner's share as £2,078 and Murray's as £262. But each partner has already contributed £212 to these

amounts, so that the amounts actually receivable are £1,866 and £50. But I should like to know why Mr. Dawson has not, in illustration No. 3 (b), transferred the deficit to the three Capital Accounts, as in illustration No. 1, leaving Garner with  $\frac{2078}{1001}$  of £1,916 = say £1,835, and Murray with  $\frac{262}{1001}$  of £1,916 = say £81. As Professor Dicksee properly says, "It is not usual to require each partner to find his share in cash . . . what is done is to debit each partner's account with his proportion of the loss," &c. This latter is the position of "the final balance of profit or loss up to the date of distribution." And, further, if the capital loss is apportioned between the partners on the basis of their capitals of £2,288 and £103, reducing their capitals to £2,038 and £90 respectively, their proportion of the £1,916 is exactly the same—i.e., £1,835 and £81 respectively. But, according to Mr. Clare Smith, Garner takes the whole of the £1,916, plus a further cash payment of £135 from Murray.

Reverting to Section 44, Subsection (a) refers to "losses, including losses and deficiencies of capital," but Subsection (b) refers only to "losses and deficiencies of capital." Now the £635 is not a loss of capital—e.g., of realisation, but presumably a trading loss. Why, then, should partners having a credit balance bring in cash to meet it. Is not a realisation loss a loss ascertained after the Revenue Account has been closed, and the position of the partners settled? And may it not be that the difference in the wording between the two subsections has some bearing upon the point? Whatever the law may be, is it not equitable that profits or losses on Revenue Account should be distributed upon a revenue-sharing basis, and losses or profits on Capital Account in proportion to the capitals? But that leaves the difficulty of the ultimate disposal in the books, as a bookkeeping problem, of the amount due from the insolvent partner which is not debited to the partners, and also that "capital loss" and "realisation loss" on a final winding-up are synonymous terms! But having settled with outside creditors, the firm has certain assets, with liabilities due to partners only, and in proportion to such claims so it distributes what it has left. And, conversely, when anything is due from a partner for loss or deficiency of capital, it is contributed in proportion to capital, just as a revenue loss is contributed in proportion to profit-sharing. That, I think, is the position from the Capital v. Revenue point of view.

In this letter I have argued from a new point of view, and had intended postponing my personal view

for a later occasion; but with your kind permission I may as well give it here. It is that the Profit and Loss Account must be closed and the balance transferred to the Capital Accounts. There is then no longer any question of profit or loss, everything having been capitalised, and, being capitalised, the final distribution must take place as stated in *Darby v. Darby*. So that in this case the £263 and £212 would be *Dr.* to Garner and Murray in proportion to their capital, and on the resulting capital the £1,916 would be proportionately distributed.

The question is of real interest—not merely academic—to all accountants, and for this reason I ask your indulgence for this long letter. As Mr. Dawson has refrained from expressing his personal views on the merits of the method he states, perhaps now that Mr. Clare Smith has so ably argued Garner's side, he can find a little leisure for reply. And if you can induce Mr. Welton and Professor Dicksee to favour us with their up-to-date views—not forgetting *Darby v. Darby*—I am sure your readers will be grateful, including

Yours obediently,

8th January 1906.

DANIEL PATRICK.

#### Small Hotels and Income Tax.

(To the Editor of The Accountant.)

SIR,—I should be much obliged if you, or your readers, could afford me any information through your columns upon the following points:—

- (1) In the case of a small hotel, managed by the owner, who reserves but one room for personal use, and whose residence upon the premises is essential to the proper conduct of the business, does the rule remain inflexible, that not more than two-thirds of the rent shall be allowed as a deduction from the profits?
- (2) Is there any justification for the claim of a Surveyor of Taxes that the rule shall apply to rates as well as to rent?

Yours faithfully,

H. C. R.

#### An Accountant's Libel Action.

(To the Editor of The Accountant.)

SIR,—In your issue of this day you comment on "An Accountant's Libel Action," and in the course thereof you say "If a Chartered Accountant undertakes this class of work, &c.," also in your Law Reports, William Henry Moore is described as a Chartered Accountant.

Unless Mr. Moore has been admitted to the Institute since the last list of members was issued, I think this description is an error. The plaintiff in the action was described in the local press as a Chartered Accountant.

It is annoying to members of the Institute to have practitioners described in the press as Chartered Accountants, when they are not such, although I do not charge you with this practice.

Yours faithfully,

H. L. ATKINSON.

Wolverhampton, 6th January 1906.

[Like our correspondent, we noticed that Mr. Moore's name does not appear in the 1905 List of Members of the Institute, but he is clearly described as a Chartered Accountant in *The Birmingham Daily Post*, upon which our information was based.—Ed. *Acct.*]

#### Executorship Accounts: Apportionment.

(To the Editor of The Accountant.)

SIR,—Can any reader inform me what is the principle usually adopted by accountants in dealing with the transactions of executors who are administering the estate of a deceased person where the will provides that the income goes to one or more tenants-for-life and the capital is divisible amongst other parties on the expiration of the trust. I mean with regard to the adjustment of capital and income in connection with purchases and sales of investments.

For instance, supposing the executors were in the habit of selling investments shortly before the interest is payable and investing the proceeds in securities on which interest has just been paid. If the decision in the case of *Re Duff; Muttelbury v. Muttelbury*, were followed the life-tenant would get nothing in respect of the accrued interest on the securities sold, and where large sums were involved it would often prove a very serious hardship to the life-tenant, and the capital of the estate would be gradually augmented at his expense.

It seems to me that the only common-sense and fair way of dealing with these transactions would be to credit the tenant-for-life with such a sum out of the proceeds of a sale as would represent the interest accrued since the last distribution up to the actual date of the sale, and *vice versa* to debit him with such a sum out of the purchase price of a new investment as would represent the interest accrued thereon since the last distribution; and I should like to ascertain

whether this principle is usually followed, or the one laid down in *Re Duff; Muttiebury v. Muttiebury*.

Yours faithfully,

9th January 1906.

J. P.

[The only legitimate way of applying "common sense" to the matter is to recognise that, as the effect of such changes is to seriously affect the interests of the life-tenant, therefore the life-tenant has a ground for complaint against the trustees. The rule *Re Duff* must not be relaxed without the consent of all parties. —Ed. Acct.]

#### Payments by Instalments and Divisible Profits.

(To the Editor of The Accountant.)

SIR,—There is difference of opinion here on the points mentioned below, and I should like to have the ideas of yourself and of some of your readers on the subject.

A Land Development Company, engaged in the business of buying and selling land, derives a portion of its profits from the gains made on such sales, payments for which are extended over a number of years.

The custom has been to credit a "Gain on Sales" Account with such profit at the time each transaction is entered on the books. What is the proper way of treating this "Gain on Sales" Account in connection with the Profit and Loss Account? In other words, what part of these gains is immediately available for dividends?

It is suggested by some that the entire amount is so applicable; the auditor insists that there can properly be carried to Profit and Loss Account an amount bearing the same amount to the total gain as the amount of principal received bears to the original amount of the debt.

For example: A mortgage for £1,200 is taken by the company in payment for property, the gain on the sale being £300. The mortgage secures 120 notes, each for £10, payable one each month for ten years. At the end of one year £120 should have been paid in—i.e., 1/10th of the original debt. The auditor claims that 1/10th of the profit (£30) should be carried to Profit and Loss Account, the remaining profit appearing on the Balance Sheet as, say, "unrealised profits."

It will be noted that the matter of interest does not enter into the question, which relates solely to the principal.

It is quite possible that the amount of a certain mortgage may be larger than the original cost of the property to the company; in such a case it is often largely a matter of opinion as to whether or not the

value of the property has enhanced sufficiently to create any margin between the amount of the mortgage and the market value of the land. While it is true that, at some period prior to the time when the mortgage is finally paid off, the property affords ample security for the amount of the loan and also for the "gain," it is also true that, while any of the mortgage remains unpaid there will be expenses connected with collection, watching the property, &c.; and on this ground I suggest that the total gain should not be carried to Profit and Loss at the time the mortgage is made.

Yours truly,

WALTER MUCKLOW.

Jacksonville, Fla., 22nd December 1905.

#### Municipal Profits.

(To the Editor of The Accountant.)

SIR,—With reference to your note in the issue of *The Accountant* dated the 6th inst., *re* the Coventry Town Council, I think in your anxiety to decry municipal trading you have discovered a "mare's nest." I think you will find, on inquiry, that the Coventry Town Council have not decided to spend another £5,000 on "electric motor cars" but on electric motors, which is a very different matter.

The hiring out of electric motors brings increased revenue to their electricity undertaking, and the purchase of motors for this purpose is regarded by the Local Government Board, who have to sanction the loan and fix the period for repayment, as reasonable expenditure.

The transaction is on all-fours with the purchase and letting out of gas stoves by a gas company.

Yours faithfully,

Ealing, 9th January 1906.

A. E. SEUR.

[As we have repeatedly stated we have no desire to decry municipal trading *per se*. Does our correspondent seriously suggest that any kind of electric motor is likely to last 24 years, or that a Government Department has power to add to the life of material objects?—Ed. Acct.]

#### Departmental Committee on Accounts of Local Authorities.

(To the Editor of The Accountant.)

SIR,—With respect to the audit of Corporation Accounts, &c., referred to this Committee, which the Right Hon. John Burns, President of the Local Government Board, is now appointing, it is nearly twenty years ago since I called public attention to this matter, when I was first President of the Institute of Municipal Treasurers and Accountants, and it is over



ten years since I called the special attention of the Local Government Board Audit Department to the need of amending their audit methods.

Yours truly,

GEO. SWAINSON.

Bolton, January 5th 1906.

## The Institute of Chartered Accountants in England and Wales.

At a meeting of the Council, held on Wednesday, the 10th January 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—

Mr. John Gane, President, in the chair; Mr. W. B. Peat, Vice-President; and Messrs. W. Ashworth, J. B. Ball, J. W. Barber, J. H. Blackburn, W. Blease, E. M. Carter, Sir John Craggs, E. Edmonds, J. Ford, W. H. Fox, A. H. Gibson, J. G. Griffiths, J. E. Halliday, B. W. Hardcastle, A. C. Harper, D. Hill, C. Fitch Kemp, H. Woodburn Kirby, G. Walter Knox, A. O. Miles, F. W. Pixley, W. Plender, F. J. Saffery, T. G. Shuttleworth, G. Sneath, J. M. Wade, E. Waterhouse, F. Whinney, and J. W. Woodthorpe.

The Examination Committee reported the results of the examinations in November and December 1905 as follows:—

	Passed	Failed	Total
Preliminary ..	113	55	168
Intermediate ..	97	59	156
Final ..	125	73	198
	<u>335</u>	<u>187</u>	<u>522</u>

Also that the following prizes and certificates of merit had been awarded:—

### PRELIMINARY EXAMINATION.

#### Prize.

Dawson, C. J., Birmingham.

### INTERMEDIATE EXAMINATION.

#### Prize.

Peake, H. O. (W. P. Price-Heywood, A.C.A.), Manchester.

### FINAL EXAMINATION.

#### First Prize and Certificate of Merit.

Garnsey, G. F. (N. G. Harries, A.C.A.), Walsall.

#### Second Prize and Certificate of Merit.

de Zouche, R. C. (C. H. Mounsey, A.C.A.), London.

#### Certificates of Merit in Order of Priority.

Haddon, R. C. (H. Grace, F.C.A.), Bristol.

Ashworth, H. (R. N. Carter, F.C.A.), Manchester.

Lunt, H. J. (J. Lunt, A.C.A.), Manchester.

Webster, W. D. (H. C. Howard, F.C.A.), London.

Murgatroyd, G. B. (A. Shuttleworth, F.C.A.), Manchester.

de Paula, F. R. M. (C. F. Cape, F.C.A.), London.

Boss, J. G., Junr. (T. Eyton, A.C.A.), Newcastle-upon-Tyne.

Hirst, W. H. (W. Dawson, A.C.A.), Dewsbury.

{ Storrs, L. C. (H. E. Sweeting, A.C.A.), Cardiff.

{ Welch, W. (C. E. Bullock, A.C.A.), Hanley.

Nixon, H. H. (W. C. Atkinson, F.C.A.), Leeds.

The Robert Fletcher Prize was not awarded, as the candidate who obtained the first place in the Intermediate Examination was over the age limit laid down by the rules. The Prize will be again competed for at the May Examination.

The Examination Committee were asked to again consider whether it would be possible to publish the results of the Examinations earlier than the second Wednesdays in January and July.

The President reported that he had received and accepted an invitation from the Right Honourable John Burns, President of the Local Government Board, to serve on a Departmental Committee he is appointing to inquire and report with regard to:—

- (1) The system on which the accounts of Local Authorities in England Wales are at present kept.
- (2) Generally as to the system on which the accounts of the various classes of Local Authorities should be kept, and in particular whether such accounts should be prepared on a system requiring the entries of receipts and payments to be confined, as far as possible, to actual receipts and payments of money or not.
- (3) The regulations which should be made on the subject, regard being had to the necessity for showing accurately the amounts passed by Local Taxation, and the purpose for which they are expended.

A resolution was passed approving of the following alterations which, it is suggested by the London Chamber of Commerce, should be made in the Companies Acts:—

- (1) That there should be a provision that notice of the nomination of an auditor or auditors other than the retiring auditor or auditors must be given to the company not less than fourteen days before the annual general meeting and included in the notice convening the meeting.
- (2) That the auditor or auditors named in the prospectus of a company should be *ipso facto* the auditor or auditors of a company up to the first annual general meeting. Otherwise the first auditor or auditors of the company to be appointed by the directors.
- (3) That where there has been an offer of shares to the public, one at least of the auditors should be a professional accountant.

The resignations of:—

Mr. G. Brand, F.C.A., London,

„ C. A. Venn, F.C.A., London,

„ E. Adams, A.C.A., New York,

„ G. Baker, A.C.A., Hull,

„ K. M. Ball, A.C.A., London,

„ G. Petter, A.C.A., Opuawhanga, and

„ P. F. Peirson, A.C.A., Coventry,

were accepted.

The Secretary reported the death of:—

- Mr. S. W. Hamer, F.C.A., Bury,  
 „ T. H. Casey, A.C.A., Portsmouth,  
 „ W. G. Lindsay, A.C.A., Glasgow,  
 „ H. J. Price, A.C.A., Chester, and  
 „ A. Sinclair, A.C.A., Newcastle-upon-Tyne.

Eight Associates were elected to Fellowship and three persons admitted to membership. A list of those who complete their Fellowship or membership by the 25th inst. will appear in our issue of the 27th inst.

### Recent Additions to the Library.

#### *Purchased.*

Student's Complete Commercial Bookkeeping. By A. Fieldhouse. 9th Edition. London: 1906.

Thorne's 20th Century Bookkeeping and Business Practice. By W. W. Thorne. Detroit, U.S.A.: 1904.

Manufacturing Cost. By H. L. C. Hall. Detroit, U.S.A.: 1904

Johnson's Bookkeeping and Accounts, with Notes on Auditing. By G. Johnson. London: 1905.

Elements of the Theory and Practice of Bookkeeping. By J. Walmsley. London: 1905.

Bookkeeping down to Date. By A. Munro. 2nd Edition. London: 1905.

Weekly Notes, 1866-1876. 11 vols.

Statutes of Practical Utility, 1905. By J. M. Lely.

Palmer's Index to *The Times*, July-September 1905.

Report and Appendices of Committee on Bond Investment Companies, 1905.

Building Societies' 10th Annual Report for 1904.

Trustee Savings Banks Return for 1904.

Stock Exchange Year Book, 1906.

New English Dictionary on Historical Principles. By J. A. H. Murray. Reign-Reserve (part of Vol. 8).

Year Book of Scientific and Learned Societies, 1905.

#### *Presented by the Author.*

Bookkeeping for Retail Grocers and other Tradesmen. By M. W. Jenkinson, A.C.A. London: 1905.

#### *Presented by the Borough Treasurer (R. W. Buxton).*

County Borough of Bury Abstract of Accounts, 1904-5.

#### *Presented by the Borough Accountant (H. H. Hopton).*

County Borough of Swansea Abstract of Accounts, 1904-5.

#### *Presented by T. A. Welton, F.C.A.*

Metropolitan Borough of Wandsworth: Report of the Council, 1904-5.

## The Chartered Accountants Students' Society of London.

### The Receiver and Manager (in Chancery).

By Mr. W. H. Fox, F.C.A.

ON Wednesday, October 18 1905, a meeting of the London Student Society was held at the Institute of Chartered Accountants, Moorgate Place, E.C., when a lecture on "The Work of the Receiver and Manager in the Early Days of his Appointment" was given by Mr. W. H. Fox, F.C.A.

The Chairman (Mr. G. SNEATH, F.C.A.) having briefly introduced the lecturer,

Mr. Fox said: Mr. Chairman and gentlemen, the subject we are to consider this evening I have divided under three heads, A, B, and C. First, A., the circumstances under which a Receiver and Manager will be appointed and the circumstances arising on the appointment. Secondly, B, the Duties of the Receiver and Manager on his Appointment; and, thirdly, C, the Receiver and Manager's File of Proceedings. These documents relate to an actual case which I wish to bring before you, and a study of them will show the general lines on which proceedings in Chancery are conducted. This last part of our subject may be extended very greatly, and it may be that we shall not be able to-night to get through the whole of the information which it was my intention to bring to your notice. Copies of some fifty documents, including orders, affidavits, accounts, &c., are those which were actually used in the Chancery proceedings taken by debenture-holders.

The business was that of wholesale confectionery, and for present purposes I intend to call it the H. J. Confectionery Company, Lim. Later on I hope the lecture may be published with the forms in full, in order that those who are entering upon their first Chancery appointment may at a moment's notice be able to refer to specimen proceedings as a guide to their actions.

#### *Section A.*

The text-books have a great deal to say, upon legal and other points, as to the appointment and duties of a "receiver," but very little as to the duties of a "receiver and manager." It will be our duty to consider the duties of the receiver and manager, especially in matters which are beyond those of the ordinary receiver.

For brevity's sake, we will therefore refer to him simply as the "manager."

- (1) A manager may be appointed by the Court to carry on an existing business with a view to preserving the goodwill and realising it as a going concern.
- (2) He may be appointed on behalf of debenture-holders if their security is in jeopardy; as, for

instance, if execution creditors have seized stock-in-trade.

- (3) In the case of a company whose debentures are in default, either as to the repayment of principal or interest at the due date.
- (4) In a partnership business a manager will be appointed with a view to realisation and dissolution.
- (5) On the death of the owner of a business and the refusal of the executors to carry it on.
- (6) Where the trustees are not capable of managing a business, then the Court might supply the deficiency.
- (7) In the case of a company where the debentures include a charge on all the property and effects of the company whatsoever it was held that the goodwill of the company's business was covered by the word "property," and to preserve this a manager was appointed. In such a case as this the company must consent to the appointment.
- (8) The Court, however, will not undertake to manage a business permanently, but will only appoint a manager as distinguished from a receiver with a view to a speedy realisation.
- (9) The Court, again, would not appoint a manager of a public company having special statutory powers—such as, say, a gas company—but would appoint a receiver to receive the net profits earned.
- (10) A person in England may be appointed manager of a property abroad, and be authorised to employ an agent abroad to represent him.
- (11) Where the Court appoints a manager of a business it in effect takes the management of it into its own hands, for the manager is the servant and officer of the Court, and upon any question arising as to the character or details of the management it is for the Court to direct and decide. The Court will not assume the management, except with the view of selling the business and winding up the estate.
- (12) Managers when appointed by the Court are responsible to the Court, and no orders of any of the parties interested in the business of which he is appointed manager can interfere with this responsibility.
- (13) If any person acts in such a manner as to interfere with the proper conduct of the business by the receiver, such person is liable to be committed for contempt of Court. A creditor, however, for goods supplied to the manager may sue him personally to recover the money, and this would not be held to be an improper interference. The manager is personally liable for goods he orders, unless he specially stipulates otherwise.

- (14) The appointment of manager generally operates as a dismissal of the servants of the company. It is well to make definite arrangements with such servants of the company as the manager desires to retain in his employment. The receiver and manager is, of course, merely custodian of the property, but he has a lien on the estate and property for the payment of any balance due to him, and liabilities for goods he purchases, in priority to costs and to persons who have advanced moneys by order of Court, and even when such advance comes before debentures by order of the Court.

- (15) The undertaking is managed and continued in order that it may be sold as a *going concern*, and with the sale the management ends.

#### Section B.

Passing on to Section B of our subject—viz., the "Duties of a Receiver and Manager on his Appointment"—we will deal first with his early days. Before the manager is actually appointed the accountant is approached by a solicitor, who informs him that steps are to be taken in a certain case for the appointment of a manager, and asks him to act. The solicitor will supply him with a form of affidavit of fitness. This is usually made by some solicitor not directly concerned in the particular case, who will state the proposed receiver is a fit and proper person to be appointed. Next he should interview the guarantee society, who are prepared to guarantee for a reasonable consideration that the manager will not run away with the funds of the business which he is going to manage.

Wherever you go the matter of premium is rather important, because the Court will not allow that item as a payment out of the estate.

We must now assume that the solicitors for the plaintiffs have issued their writ, and that on motion made in the Chancery Division (usually on Friday, a most unlucky day) we have got our manager appointed by order of the Court.

The solicitors write a letter saying so, and then he must be prepared to give security. It is important to have the letter, because, as the order of appointment cannot be drawn up and entered for a few days, there is nothing to produce but the solicitor's letter as a guarantee that the appointment has been made. Probably the manager will have to go to the bank and borrow what may be necessary in the way of wages, for on Saturday morning often a considerable claim for wages has to be met in the case of a trading or manufacturing company. It must either be advanced by the manager personally or an advance obtained on a special banking account, which may be opened in the name of the company or matter. On the subject of opening a separate banking account, it must be remembered, should the bank fail, the manager is not

personally responsible for funds deposited with such bank ; but if the funds are mixed up with his own private funds, and his bank fails, then he is personally responsible for the loss occurring to the estate.

Next, there should be chosen from amongst the staff of the company a representative, who may be responsible for the business management, subject to the supervision of the Chancery manager. This representative, and others, may be guaranteed also by the guarantee society, if policies have not been previously taken out by the company.

Formal possession should be taken of the keys of the office and works, and these should be confided to the care of some particular official, whom you will instruct to act for you. Your own representative should be on the spot daily, but a representative who is perhaps a youthful but promising articled clerk has not necessarily received a training in the making of sweets and cakes, plum puddings, and similar things. (Laughter.) That must be left to the practical man. (I am assuming that the business carried on by the company whose proceedings in Chancery we shall discuss is that of wholesale confectioners.) A great deal of discretion at first has to be exercised in dealing with the company's staff, and application should be made to the Master in Chambers as soon as possible to authorise the continued employment of such of the clerical staff and men as may be necessary in order that their wages and salaries may be paid out of the estate. Stock should be taken at once in detail. It is very difficult in some cases for the manager to check this, but it is important to have it prepared in detail, and with the Ledger balances a statement of liabilities and assets should then also be prepared.

The fire policies on freehold and leasehold property, stock, &c., should be investigated, and steps taken at once to ascertain that the stock and other property is sufficiently covered. Notice in writing should be given to the insurance offices to have the policies endorsed over to the manager.

The leases and tenancies agreements must be examined. Under the Preferential Payments in Bankruptcy Amendment Act of 1897 preferential payments should be paid out of the first funds. As a matter of fact, the receiver will probably find that the funds will all be wanted for carrying on the business, and therefore he should not be in a hurry to pay out money under the Preferential Payments Act. (Laughter.)

It may be well here to give a reminder as to the terms of this Act, which is :—

An Act to amend the law regarding preferential payments in the case of companies (15th July 1897).

1.—*Short Title.*—This Act may be cited as the Preferential Payments in Bankruptcy Amendment Act, 1897.

2.—*Priority of Certain Debts.*—In the winding-up of

any company under the Companies Act, 1862, and the Acts amending the same, the debts mentioned in Section 1 of the Preferential Payments in Bankruptcy Act, 1888, shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

3.—*Payment of Debts out of Assets in certain cases.*—

In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating charge, or in case possession is taken by or on behalf of such debenture-holders of any property comprised in or subject to such charge, then, and in either of such cases, if the company is not at the time in course of being wound up, the debts mentioned in Section 1 of the said Preferential Payments Act shall be paid forthwith out of any assets coming to the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect of such debentures or debenture stock. And the periods of time mentioned in the said Act shall be reckoned from the date of the appointment of the receiver, or possession being taken as aforesaid, as the case may be.

(The Act applies to England and Wales and Ireland, but not to Scotland.)

The sections of the Preferential Payments in Bankruptcy Act, 1888, before referred to are as follows :—

1.—(1) In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

(a) All parochial or other local rates due from the bankrupt or the company at the date of the receiving order, or, as the case may be, the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property, or income-tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, and not exceeding in the whole one year's assessment ;

(b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds ; and

(c) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece-work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order, or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith, so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section, so far as it relates to the property of a bankrupt, shall have effect as part of Section 40 of the Bankruptcy Act, 1883.

(6) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

2.—(1) Nothing in this Act shall alter the effect of Section 5 of the Act 28 & 29 Vict., c. 86, "To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by Section 125 of the Bankruptcy Act, 1883.

SCHEDULE.  
*Enactments Repealed.*

Session and Chapter	Title	Extent of Repeal
46 & 47 Vict. c. 28 ..	The Companies Act, 1883	The whole Act, except as regards its application to Ireland
46 & 47 Vict. c. 52 ..	The Bankruptcy Act, 1883	Section forty, sub-sections one and two
49 & 50 Vict. c. 28 ..	The Bankruptcy (Agricultural Labourers' Wages) Act, 1886	The whole Act

Having referred fully to the payments which are preferential, we will deal with the question of unsecured creditors.

You will doubtless receive application for immediate payment from numerous unsecured creditors, but I do not suggest payment at once. (Laughter.)

Tell them to send in their accounts, which will be put upon the List of Claims. Some of them may think that they will receive a cheque by return, but that is not always the case. (Laughter.) Some will threaten proceedings and attempt to put men in possession, but refer them to your solicitor, who will inform them as to the state of the case, as otherwise you may be made liable for costs. (Laughter.)

You must take diligent steps to collect the debtors' accounts, and the less the fact of the Chancery proceedings is made public the better. If that knowledge spreads you may find that a man who deals with you may go off somewhere else to make his purchases, so that it is extremely desirable to be very discreet in that particular. Let the monthly accounts to debtors go out just as usual. You are quite entitled to continue to carry on the business precisely on the same lines and in the same style as the company has been carrying it on. You may give credit in the ordinary way, as long as there are no extraordinary risks.

You will find that in order to keep clear of trouble you will have in the early stages of the proceedings to think of your duties all day and every day, and most of the night. (Laughter.) There are many pitfalls surrounding the manager, and you must keep your eyes wide open, and for a time you must devote yourself entirely to the business until it is running smoothly and you can hand it over to a clerk.

You will have to confer with solicitors—who are our very good friends—but who sometimes give advice which you feel does not fall in with your own views; and do not therefore take it without due consideration and further consultation, as you may find they have not realised the exact facts of the case to be advised upon, owing to instructions not having been fully or properly given in the first place.

Rent due is usually regarded as a preferential claim, but really the landlord has no preferential rights, except by being able to take stock in execution in order to enforce payment of rent due. However, if you continue the premises over the quarter's day it is an obligation to pay the rent, but don't hurry. (Laughter.) In respect to gas and electric light, you will have to make arrangements, and these companies will advise you you are bound to pay arrears if they insist upon it, but take some independent advice from your solicitors on this point before paying.

A strict Cash Account must be kept, and in order to have your account ready for lodging in Court it is better for you to show the credit side in detail than for you to jumble various disbursements into one round sum. Petty Cash items, however, may be shown on separate sheets, periods and the total entered, say, once a month in your Cash Account.

Among the first applications which will have to be made to the Master in Chancery will be for permission to give up leasehold premises not required, for permission to complete any special contract, or perhaps to refrain from fulfilling any existing contract on which there would appear to be a loss likely to arise.

When important applications have to be made in Chambers it is desirable that the manager should appear personally, because he can often throw light upon some point which the solicitor's clerk can not, but the manager need not attend merely formal applications.

Next, the solicitors must apply for the collection of debts which have not been paid on the application of the manager, and which he is advised require pressure, but no steps involving legal proceedings should be taken without the consent of the Court.

Then it may be wise to sell undesirable assets—that is, special portions of the assets not required in the ordinary way of business, and which might depreciate in value.

Steps should be taken to put the company into voluntary liquidation, if this has not already been effected. The unsecured creditors are not likely to proceed any further if the company is in voluntary liquidation—a result which can be effected by one extraordinary resolution, if it is stated that by reason of its liabilities it cannot continue its business. I recommend this being done by the shareholders at once, as there is no reason why the Official Receiver should be allowed to put his finger into the pie, with the view of making fees to assist in justifying the existence of an insolvent department of the Board of Trade.

It is usual to appoint the receiver to be liquidator in the voluntary liquidation, and in that capacity nothing can be paid out of the funds realised in the receivership until the debenture-holders' capital and interest and the costs are all paid. For instance, the advertisement in the *Gazette* of his

appointment will need to be paid personally by the liquidator, although it may ultimately be refunded if there is a surplus for payment over to the company.

Where affidavits are made by the receiver and manager in the Chancery proceedings he should, if he pays for them himself, at once recover the commissioner's fees from the solicitors having the conduct of the proceedings, as they will not be allowed in his account rendered to the Court.

Now it will be necessary to look into and inquire as to the position of firms to whom goods are being supplied by contract, and in cases of doubtful stability cash should be required. Particulars of all contracts for the purchase of goods or supply to customers should be ascertained.

Always use diligence and common sense in connection with the management, and you are pretty certain to be safe. Study the *technique* of the business, but do not devote too much time to merely technical points. Attend carefully to the legal aspect of points arising in connection with the conduct of the proceedings, so far as they may affect you personally.

Carry on the business in the usual manner, and advertise the fact of the business being in Chancery as little as possible, because if the customers are informed of the appointment of a receiver and manager they may go elsewhere and the goodwill may be ruined. The object of the manager being appointed is specially to preserve the goodwill and to sell the business as a going concern.

Sometimes the employees put their funds together and make a bid for the business. It is very proper that they, knowing the possibilities of the business, should buy it. In the alternative, the business may be discreetly advertised. It may be left to the manager as to the best way to do that. If competitors in trade come to look over the works with an expressed intention of buying, care should be exercised. I have a case in mind where an opposition firm of wholesale confectioners came to look over the works of a business in Chancery. They were shown everything, including some special new lines in sweets in boxes with ornamental covers. The firm wrote shortly afterwards saying that they were not prepared to make an offer for the stock or the business, and would proceed no further in the matter; but, strangely enough, by a remarkable coincidence, within a month the firm in question flooded the market with identical packets of sweets!

Sales of portions of the stock and plant not required should be arranged privately, if possible, and sales by auction of plant and manufacturers' stock should only be resorted to as a last resource. In the case of raw material or produce for which there is a ready market, and which is not required for the business, a Mincing lane broker could realise at once.

As regards sales by auction, if it is a question of selling real or leasehold property, the Court will require to settle

the conditions of sale. If it is a question of selling stock or plant, probably the Master in Chancery will permit a "sale out of Court" to take place. It is well in making an application for this purpose that the exact terms as to commissions payable to the auctioneer, and expenses to which he is to be entitled, should be stated. I have a case in mind where an item of porters' wages for shifting stock was not allowed by the Master because one head porter had paid the under porters, and rendered one account to the auctioneer, instead of the auctioneer paying each porter individually and taking a separate receipt. (Laughter.) This legal refinement is often hard for the lay mind to understand, but as time goes on the student will find it more and more difficult to appreciate the refinements of reason which govern the decisions of the Law Courts. (Laughter.) In the particular case I have mentioned there happened to be a surplus after paying the debentures, and the manager, who was also the liquidator, was able to pay the costs disallowed in his capacity as liquidator. It is, however, very exceptional to have a surplus in these cases.

If a purchaser for the business as a *going concern* is obtained the manager will, subject to the consent of the Court, enter into a contract selling the same. The consent ought to be obtained within a reasonable time—say one month. It is usual to obtain a deposit of 10 per cent. when the agreement is entered into, and the Court will probably not sanction the sale unless a reasonable deposit has been paid as a guarantee of good faith on the part of the purchaser. As the purchase would be effected as from a particular date the manager would have to carry it on as trustee for the purchaser until the whole of the property is paid for and handed over, and under these circumstances provision should be made for his remuneration for these services.

When any special step is taken by the manager to save loss, or protect any part of the property, which involves a special payment, application should be made to the Court at the earliest possible date to have such payment sanctioned.

A case in point is where customers were being supplied with a large quantity of goods, consisting of heavy iron-work. The goods were on the point of being delivered from the barge, and the manager heard rumours of impending failure. The manager stopped the barge in the Thames, but ultimately being advised that he was bound to deliver the goods he did so. The barge owners claimed a considerable sum for demurrage, which was paid. On application to the Master, with full explanation, the payment was allowed.

On another occasion, however, the Master would not allow the salary of a bookkeeper and collector, whose services had been retained, without special leave, after the

business had been sold, and after the receiver and manager had accordingly become receiver only. No doubt had the application been made at the time, and the circumstances explained, the claim would have been allowed.

In appointing a representative from the staff of the company to be in charge of the business, see that you choose the right man. I remember an instance illustrating this advice. The choice lay between two men, one of whom had been the founder of the business, and a second man who was one of the ordinary directors. The manager chose the latter, and the workpeople, male and female, were for going out on strike. The manager had to interview and harangue separate meetings of the workpeople, telling them that as England was a free country they certainly could all leave if they wished. They decided not to leave, and eventually the manager's choice was found to have been justified.

As regards Claims for Rent, I may mention a case in point, where the manager paid rent to the end of the previous quarter, and then sold off part of the stock and removed the remainder before the new quarter day, offering to surrender the leases, which offer was accepted by the landlords. The Court, however, would not make an order approving the action of the manager until all the debenture-holders had signified their assent. The landlord's solicitor frequently endeavours to make the manager liable under the terms of the lease, but such a claim should be strenuously resisted. The claim of the landlord for dilapidations would simply be against the company after the debentures had been paid off, although the manager sometimes has a claim for dilapidations made against him.

If there are contracts for the supply of goods to a municipality, or Government Department, they will require to be even more closely inquired into than in the case of private firms or companies.

To instance a case in point. A company had a contract with the War Office for the supply of goods, for which the manager rendered an invoice amounting to £7 10s. 0d. The invoice was returned by the department, and two quires of blue double-demy forms, printed all over with instructions, were sent to the manager on which to fill up particulars. On the manager pointing out by letter that the form sent did not apply, a delay of ten days occurred, and then there came by post from one of the departments *eight quires of blue double-demy forms*, again printed and ruled all over. Meanwhile the goods themselves had been returned as not being up to the specification!

If the business is losing money the manager should apply to the Court to sell it forthwith, in order to relieve himself of what in six months or a year's time may become a very serious personal responsibility. He is oftentimes put in a very awkward position owing to his solicitor being also solicitor for the plaintiff in the action. Case in point :

Concerning a newspaper company, where the plaintiff would not allow the manager to accept an offer of about £30,000, on the ground of it being insufficient, with the result that the paper was ultimately sold for about £5,000, involving the manager in a personal responsibility of some thousands of pounds beyond the assets realised.

The first account of the receiver and manager will probably have to be submitted at the end of three months. He will then attend before the Master (after the account having been vouched by the junior clerk), and will endeavour to persuade that stern official that he is entitled to 5 per cent. on the receipts and a special allowance of (say) £1,000 as manager. A case occurs to me in which 70 per cent. on the receipts was allowed, but this was the tail end of a Chancery suit, and was on the final account, where the receipts amounted to a total of £3.

There is an appeal on the question of remuneration, as in all others, to the Judge in Chambers, if the manager is dissatisfied with the allowance made him. The Judge, however, usually supports his Master (having, no doubt, discussed the matter with him beforehand), and the receiver and manager may find on making application to the Judge that not only is there no increase of remuneration for him, but that he may, like the man in the parable, even have taken from him that which he hath. (Laughter.)

#### *Section C.*

There is no time this evening to discuss Part C, containing copies of all the documents in the Chancery proceedings arising on a debenture-holder's action, I will therefore merely submit a list of these, and trust that on a future occasion we may have the opportunity of fully discussing them.

#### *Receiver and Manager's File of Proceedings.*

- (1) Writ of summons in action.
- (2) Notice of motion for appointment.
- (3) Affidavit in support of application. 31st October 1901.
- (4) Affidavit in support of application. 6th November 1901.
- (5) Affidavit of fitness of proposed receiver by a solicitor.
- (6) Order appointing receiver and manager (management three months probably).
- (7) Statement of claim. 27th November 1901.
- (8) Order for judgment giving debenture-holders charge. 7th December 1901.
- (9) Affidavit of receiver and manager as to position of company's affairs, dated 13th December 1901.
- (10) Recognisance of the receiver, dated 13th January 1902.
- (11) Receiver and manager's guarantee society bond, dated 13th January 1902.
- (12) Receiver and manager's law guarantee and trust society limited bond, dated 13th January 1902.

(13) Affidavit of receiver and manager in answer to inquiries made under Order dated 7th December 1901, dated 20th January 1902.

(14) Certificate of result of accounts and inquiries. January 1902.

(15) Affidavit of W. H. Figures in support of summons for leave to continue to act as manager.

(16) Order allowing W. H. Figures to continue as manager.

(17) Master's certificate allowing receiver's security.

(18) Affidavit of receiver in verification of first account.

(19) Receiver and manager's first account. 8th November 1901 to the 31st January 1902 (inclusive).

(20) Affidavit of receiver and manager in support of summons for leave to sue and compromise.

(21) Affidavit by receiver in support of summons for sale.

(22) Affidavit of receiver verifying accounts.

(23) Affidavit of receiver and manager for remuneration.

(24) Affidavit of receiver and manager making petition to sell up.

(25) Costs of receiver of appointment and adjournment to be paid by receiver pursuant to Order dated 4th May 1903.

(26) Costs of defendant company of appointment and adjournment to be paid by receiver pursuant to Order dated 4th May 1903.

(27) Affidavit of receiver and manager in support of summons for leave to sue.

(28) Master's certificate of allowance of receiver and manager's first account.

(29) Costs of solicitors on summons to vary. Order dated 26th May 1903.

(30) Costs of defendant company on receiver's summons to vary to be paid pursuant to Order dated 26th May 1903.

(31) Affidavit of receiver and manager verifying his second account.

(32) Receiver and manager's second account. 1st February to the 30th April 1902 (inclusive).

(33) Master's certificate of allowance of receiver's second account.

(34) Affidavit of receiver and manager supporting the employment of additional clerks for a certain time.

(35) Affidavit of receiver and manager verifying his third account of receipts and payments.

(36) Receiver and manager's third account of receipts and payments. 1st May to the 31st July 1902 (inclusive).

(37) Master's certificate of allowance of receiver's third account.

(38) Affidavit of receiver verifying fourth account.

(39) Receiver's fourth account. 1st August to the 31st October 1902 (inclusive).

(40) Affidavit of receiver as to items in fourth account.

(41) Affidavit of receiver verifying his fourth account.



(42) Master's certificate of allowance of receiver's fourth account.

(43) Affidavit of receiver in support of summons to vary Master's certificate as to auctioneer's account.

(44) Order discharging receiver, &c.

(45) Affidavit of receiver in verification of his fifth and final account.

(46) Receiver's fifth and final account. 1st November 1902 to the 25th June 1903 (inclusive).

(47) Master's certificate of allowance of receiver's fifth and final account.

The Chairman said he would venture to offer a few remarks upon the interesting lecture Mr. Fox had delivered to them. He did not think Mr. Fox had quite made it clear that the appointment of a receiver and manager could only be made a charge upon the general undertakings of the business. Mr. Fox said, "Be careful not to incur debts." They might be landed in liabilities they did not like to incur. The usual way was to make application to the Court for leave to pay certain moneys. A receiver and manager might be appointed on a Friday, and on Saturday wages were due and not a penny was in the till. This was usually the state of affairs, for it was only as a last extremity that a manager was asked to step in. Payment was often paid out of the security of the assets. As to the length of time for a managership to continue, the Court would not allow them to carry on for any great length. They were usually appointed for three months, and then had to apply to the Court again, giving reasons why they should continue another three months. And this was comparatively easy, if they could satisfy the Court that the business was paying under their control, with results to the advantage of the debenture-holders. Mr. Fox said a particular business lasted eighteen months. He (the Chairman) knew of a case that went on for three years. Ultimately they had to throw it up altogether. That was a mining concern. As a rule, though, the Courts did not allow any length of time. He was not aware—he thought the practice must be of recent date—that the appointment of manager dispensed with notice to the clerks in the business of discontinuance of their engagement. The clerks' rights were only against the company concerned. They were engaged by the company, not by the debenture-holders, and formal notice to them seemed necessary for their protection. Creditors had to take their action against the company, and to enforce their rights to put the company into liquidation. Sometimes they presented a petition for winding up. If compulsory liquidation was insisted on it almost universally followed that the matter was transferred to the winding-up Court. In the case of a receiver and manager being appointed he was allowed by the Court commission on results specially for the

management of the business. The two offices were generally made separate appointments. Petty accounts were generally voluminous, and he feared they would not be able, as a rule, to get them passed in the form Mr. Fox suggested. The practice, as a rule, was to put petty disbursements into a separate account, but not to put them in in detail.

Mr. F. G. Bowers said they would all be glad to get a text-book based on practical accountancy questions. Such a work would be helpful in practice. Mr. Fox, on the occasions he had been appointed receiver, appeared to have been fortunate in not having to hurry very much. Where one of his (the speaker's) principals had been appointed, he was at once in a desperate hurry to act. He had to rush off to the offices or works to turn the bailiffs out. He had to try and find the Judge in Chambers, and afterwards to pursue him to his country house, and hurry back to stop the bailiffs selling off. Then, as to the opening of a banking account, it was found that the company's bank refused to transfer the balance, or to do much for the receiver, and it had been thus rendered absolutely necessary to pass the receiver's payments through the firm's account. As to small disbursements, he knew a case in which the Master's people refused to take it in detail, and made the receiver pay the expenses of preparing it. In some cases these matters were taken into account in fixing the remuneration of the receiver and manager. Mr. Fox had mentioned some items which appeared to have given him trouble. They were expenditure on affidavits, &c. His (Mr. Bower's) experience was that these were covered by the petty expenditure allowed by the receiver. As to wages, he thought a record of these was generally kept, but they were not receipted. They were verified and passed in the affidavit of the receiver. The real difficulties of the receiver were not technical; they were practical. They could not find anybody to help the receiver and manager in the management of a business. He supposed that must be so, and be left to the general business knowledge of the accountant. They were grateful to Mr. Fox for his lecture. As an addition to the literature of accountancy it would be the most practical thing of its kind.

Mr. H. Barham, A.C.A., said that, as the previous speaker said, the practical difficulties were their greatest trouble. The legal part of their work was out and dried, but practical difficulties would arise. Many of the duties of the receiver were set out in the order appointing him, and it would be found that he had to do things not quite in accordance with any particular lecture or paper. Mr. Fox had referred to the difficulty of payment of creditors. He had had experience where the receiver was expected to pay the creditors at once, the amount being due at the date of appointment. He had been appointed receiver in connection with a company whose business depended upon

the gas being kept going, and he paid the gas bill in order to keep the business going. But he was told by the Master that he had no right to do this. This was a sample of the difficulties which the receiver experienced.

Mr. H. Ianham, A.C.A., said that a practical difficulty was, where a receiver was also appointed liquidator, and made payment, would he be able to recover, or would the debenture-holders allow him his costs? Again, what were rates? Was water a rate, now that we had a Water Board? Gas was not. He thought, with regard to the difficulty the last speaker got into through paying a gas bill, that he ought to have said to the gas company, as to other creditors, "This account will be paid, but you will have to wait for it."

Mr. Barham: They would not give me the chance.

Mr. Ianham proceeded to refer to a curious case which came under his notice, where a receiver and manager was appointed liquidator, and twice had to bring an action against himself as manager, because the debenture-holders wanted the business sold and the shareholders objected. The Judge stopped the proceedings at last, saying they were frivolous. Finally, he asked, supposing a receiver began to draw money out as soon as he was appointed, as he could, and he was afterwards withdrawn, what rights of recovery were left?

Mr. Fox, replying to the questions on the discussion generally, said he only remembered one case where the question of directors of a company had drawn fees which they were not entitled to draw in advance, and they had to repay them to the liquidator, not to the receiver. The liquidator recovered costs from any surplus there might be. If there were no surplus, there was no way of his recovering. Great discretion was given to Masters in Chancery, and their permission for payments varied very much. He had known the same chief clerk to allow only  $1\frac{1}{2}$  per cent. on the turnover of a business of £100,000 a year, and 5 per cent. on a business of £20,000 a year. As to the continuance of the appointment of the manager, the Masters at the Courts apparently had less strain put upon them than formerly, and more time to look up the cases, and they did not allow any very long continuance of the appointment. It was usually extended for quarterly periods. As to the passing of certain accounts, the payment by the manager of premiums to guarantee his own honesty would not be allowed out of the funds in his hands, and would be struck out of his account, unless he were acting without remuneration.

As to vouchers for wages, the amounts paid were usually entered in a Wages Book which the cashier signed. Afterwards the cashier might have to make affidavit saying that he had paid as in the book, and the book would be made an "exhibit."

Of course, questions would often arise which they could not possibly foresee, and all they could do was to keep their weather eye open, and not be in a hurry to pay money away. (Laughter.)

Expenditure on affidavit fees had been knocked out by the junior clerk in auditing the accounts, and that was why one should be careful to get them from the solicitors. As to the payment of unsecured creditors at once on appointment of receiver, as mentioned by Mr. Barham, that was an unusual position of affairs, and a large surplus must have existed.

The appointment of manager was often made in a hurry, and the receiver had to do many things at once. For some time matters would require his personal attention, and it would be a little while before he could hand over a part of it to one of his staff.

As to banking accounts, he would not suggest always going to the bank where the companies had their accounts. He went to his own bank. It was well, therefore, to be on friendly terms with one's bank. (Laughter.)

As to petty disbursements, he did not suggest that pennies should be entered. He could only say that the accounts as he submitted them were passed by the Court. They were vouched for by the junior clerk before they went to the Master. Payments of over £2 had to be vouched for specially.

They had hardly touched the fringe of their subject that evening. He hoped to be able to put the various documents he had referred to in such a form as to give some idea of their particular use—to show what statements of claim and other documents should contain, and not to present them with all blanks, as a form in that condition was often quite useless for the purpose of supplying information to the student.

On the motion of Mr. F. C. Allwork, seconded by Mr. F. T. Dickie, a vote of thanks was heartily accorded to the lecturer.

A similar compliment was paid to the Chairman on the motion of Mr. Harold Barham, seconded by Mr. Comben.

## Meeting for the ensuing Week.

Thursday—LEEDS AND DISTRICT CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.—Lecture, "The Administration of the Estates of Deceased Insolvents," by Mr. D. F. de L'Hoste Ranking.

## Failures 1905.

### Statistics of Failures in the United Kingdom during the year 1905.

By RICHARD E. SEYD, F.R.S.

THE number of Failures announced during the year 1905 was 10,231 (5,402 Bankruptcies and 4,829 Deeds of Arrangement, including Scotch Trust Deeds), of which 916 (492 Bankruptcies and 424 Deeds of Arrangement) are in the financial, wholesale, and manufacturing branches of trade, and 9,315 (4,910 Bankruptcies and 4,405 Deeds of Arrangement) in the retail trade, professional pursuits, and working classes, &c.

The Failures in the Wholesale Trades were distributed as follows:—

	1903.	1904.	1905.
In London .. .. .	215	234	279
„ Lancashire and Cotton District .. .. .	112	169	132
„ Yorkshire and Woollen District .. .. .	110	99	93
„ Birmingham and Iron District (including Sheffield) .. .. .	64	118	101
„ Newcastle, Hull, Middlesbrough, and North East Coast .. .. .	30	29	39
„ Bristol, West of England and South Wales .. .. .	17	37	43
„ Rest of Provinces .. .. .	142	*114	*126
„ Scotland .. .. .	82	90	90
„ Ireland .. .. .	21	13	13

\* Leicester and Midlands, 1904, 80; Provinces, 34.

\* Leicester and Midlands, 1905, 96; Provinces, 30.

The number of Failures in each month during the year 1905 was as follows:—

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Wholesale .. .. .	81	76	105	81	73	61	61	73	81	69	88	67
Retail .. .. .	769	810	951	692	821	756	697	769	678	829	830	713

Of which Deeds of Arrangement are—

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Wholesale .. .. .	33	32	57	46	27	32	31	32	30	36	44	24
Retail .. .. .	336	399	457	324	396	317	352	390	315	368	409	342

Distributed as follows:—

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
ENGLAND { Wholesale .. .. .	77	69	95	70	65	54	54	65	73	63	72	56
{ Retail .. .. .	669	693	816	598	699	636	623	660	608	733	722	616
SCOTLAND { Wholesale .. .. .	4	6	8	11	7	5	7	7	6	13	9	9
{ Retail .. .. .	76	80	103	59	102	89	54	84	43	73	78	75
IRELAND { Wholesale .. .. .	—	1	2	—	1	2	—	1	1	—	3	2
{ Retail .. .. .	24	37	32	35	30	31	30	25	32	23	30	22

The various branches of Commerce show the following proportions of Failures:—

	1903.			1904.			1905.				1903.			1904.			1905.		
	B	D	Tl.	B	D	Tl.	B	D	Tl.		B	D	Tl.	B	D	Tl.	B	D	Tl.
Agents, commis., &c...	60	13	73	32	19	51	30	18	48	Electroplaters .. .. .	1	1	2	2	10	12	4	3	7
Bankers, banks and foreign bankers ..	1	—	1	1	—	1	—	—	—	Engineers, founders, iron, and metal, merchants .. .. .	21	51	82	28	60	152	86	70	156
Boots and shoes .. .. .	28	35	63	23	40	63	35	36	71	Financial agents .. .. .	12	1	14	15	1	16	22	1	28
Brewers .. .. .	—	—	—	3	2	5	2	2	4	Glass, lead, earthenware .. .. .	—	1	1	3	9	17	4	3	7
Cement, asphalt, &c...	1	—	1	—	1	1	2	—	2	Gunpowder .. .. .	—	—	—	—	—	—	—	—	—
Cigars and tobacco .. .. .	2	—	2	7	1	8	3	5	8	Hats and caps .. .. .	6	5	11	3	6	9	7	4	11
Coals .. .. .	9	4	13	19	5	24	13	10	23	Hops .. .. .	1	2	3	—	1	1	1	1	2
Contractors .. .. .	2	—	2	2	4	6	2	1	3	Jewellers .. .. .	3	8	11	4	11	15	9	12	21
Corn merchants and millers .. .. .	6	8	14	7	6	13	10	10	20	Manufacturers & merchants of woollens, silks, &c. .. .. .	23	21	59	24	50	74	30	40	70
Cotton and Colonial brokers .. .. .	3	4	7	1	4	5	3	2	5	Merchants .. .. .	54	46	100	35	37	73	50	31	81
Cotton spinners and manufacturers ..	6	10	16	3	17	20	—	3	3	Oil-cloth .. .. .	—	—	—	2	3	5	—	2	2
Curriers, tanners, and leather merchants ..	13	13	26	11	13	24	16	10	26	Provisions .. .. .	6	11	17	27	20	47	26	31	67
Discount & bill brokers .. .. .	—	—	—	—	—	—	—	—	—	Rope, sails, &c. .. .. .	4	3	7	7	7	14	—	4	4
Wholesale chemists and druggists .. ..	3	3	6	7	3	10	4	5	9	Ship-brokers & owners .. .. .	7	8	15	7	3	10	16	3	19
Drysalts, oils, and colours .. .. .	15	9	24	9	11	20	7	4	11	Shipbuilders .. .. .	—	—	—	—	2	2	1	1	2
Dyers, bleachers, and finishers .. .. .	7	10	17	6	15	21	5	5	10	Stationers, paper, &c. .. .. .	9	9	18	1	6	7	11	9	20
										Sugar refiners .. .. .	—	1	1	—	—	—	—	—	—
										Tea, coffee, & groceries .. .. .	5	11	16	4	6	10	5	10	15
										Timber .. .. .	3	10	13	15	12	23	11	15	23

	1905.			1904.			1903.		
	B	D	Tl.	B	D	Tl.	B	D	Tl.
Warehousemen and importers of foreign goods .. .. .	19	57	76	30	47	77	56	46	102
Wine .. .. .	6	14	20	13	12	25	7	19	26
Woolen and cotton waste .. .. .	8	8	6	—	5	5	1	3	4
Woolstaplers and merchants .. .. .	—	1	1	5	7	12	8	5	8
Total .. .. .	380	263	743	426	407	883	492	424	916

## In Retail Trades, &amp;c., there were:—

Accountants .. .. .	5	—	5	17	2	19	24	2	26
Actors, artists, &c. .. .. .	10	—	10	11	4	15	16	4	20
Aerated waters, &c. .. .. .	14	21	35	18	24	42	28	26	51
Auctioneers, house agents, surveyors .. .. .	74	23	97	73	23	96	86	24	110
Bakers .. .. .	131	96	227	126	148	274	140	118	258
Blacksmiths .. .. .	41	25	66	61	34	95	50	45	95
Boatbuilders, mast makers .. .. .	5	5	10	1	7	8	8	8	16
Brewers .. .. .	6	4	10	11	10	21	6	8	14
Brick makers .. .. .	11	10	21	11	6	17	4	2	6
Brush & basket makers .. .. .	6	8	14	4	7	11	2	5	7
Builders, architects .. .. .	335	205	540	351	318	669	354	265	600
Butchers .. .. .	98	65	163	126	67	193	138	96	236
Cab-drivers, carters, &c. .. .. .	4	—	4	2	—	2	8	—	8
Cab, omnibus proprietors, livery-stables .. .. .	26	23	50	26	25	51	36	29	65
Cabinet makers, upholsterers .. .. .	81	68	149	64	108	172	53	101	154
Carpenters, joiners .. .. .	83	50	133	52	28	75	51	12	63
Carriage builders .. .. .	26	11	37	27	24	51	24	84	58
Carriers, cart owners .. .. .	26	20	46	27	23	50	26	18	46
Carvers, gilders, &c. .. .. .	12	15	27	16	29	45	21	28	49
Cattle & horse dealers .. .. .	19	7	26	30	16	46	38	13	51
Chemists and druggists .. .. .	22	22	44	30	55	85	24	33	57
Clerks and commercial travellers .. .. .	124	28	152	268	36	296	245	42	287
Clerks (holby orders) .. .. .	11	5	16	13	3	16	10	1	11
Coal dealers .. .. .	50	40	90	57	66	123	70	60	130
Coffee and eating-house keepers .. .. .	27	15	42	23	17	40	22	17	40
Confectioners .. .. .	62	55	117	66	98	164	64	106	170
Coopers .. .. .	2	—	2	2	2	4	4	2	6
Corn chandlers, hay and straw dealers .. .. .	29	29	58	26	29	55	29	28	57
Cow keepers and dairymen .. .. .	27	12	39	42	20	62	39	23	62
Cycle manufacturers and agents .. .. .	52	57	109	57	81	138	56	77	133
Drapers and hosiery .. .. .	129	214	343	152	275	427	142	269	411
Engineers and officers in Army and Navy (active and retired) .. .. .	24	2	26	27	2	29	25	4	29
Farmers .. .. .	181	148	329	240	240	480	275	247	522
Fishing smack owners .. .. .	5	1	6	9	4	13	8	1	9
Fishm't's & poulterers .. .. .	69	14	83	62	26	88	91	40	131
Furniture dealers .. .. .	49	62	111	36	41	77	38	48	81
Gardeners, market gardeners .. .. .	20	11	31	25	10	35	29	9	38
General dirn., curm'ties .. .. .	60	42	102	63	35	148	53	60	113
Glass and earthenware dealers .. .. .	29	41	70	17	42	59	19	35	54
Greengrocers, fruiterers .. .. .	104	50	154	104	48	152	141	58	199
Meat, provision d'l's .. .. .	888	594	1482	896	663	1559	415	699	1114
Hair dressers and perfumers .. .. .	25	22	47	31	20	51	26	13	40
Hatters .. .. .	7	20	27	9	15	24	7	22	29
Ironm't's, japanners, tinsmen .. .. .	54	77	131	67	126	203	56	114	170
Jewellers, watchm't's .. .. .	25	65	100	56	98	154	40	79	119
Labourers, bricklayers .. .. .	62	14	76	169	37	206	136	20	156
Leather dealers .. .. .	1	7	8	5	12	17	4	10	14

	1905.			1904.			1903.		
	B	D	Tl.	B	D	Tl.	B	D	Tl.
Lodging house keepers .. .. .	42	22	64	32	18	50	59	23	82
Millers & corn dealers .. .. .	10	11	21	31	37	68	12	38	45
Milliners and artificial florists .. .. .	38	47	85	35	64	99	34	73	107
Miners, colliers .. .. .	49	—	49	46	1	47	47	4	51
Music sellers and publishers .. .. .	3	6	9	5	6	11	8	11	19
Musical instrument makers and dealers .. .. .	12	15	27	10	24	34	9	14	23
Newspaper proprietors .. .. .	7	2	9	12	2	14	13	1	13
Nurserymen, florists .. .. .	23	20	43	23	18	41	18	13	31
Oilmen .. .. .	5	9	14	10	18	28	4	20	24
Opticians .. .. .	3	7	10	—	—	—	—	—	—
Pawnbrokers .. .. .	9	10	19	7	15	22	4	8	12
Photographers .. .. .	15	8	23	15	11	26	25	14	39
Plumbers, painters, gasfitters .. .. .	142	124	266	116	158	274	161	178	342
Printers, stationers, engravers .. .. .	48	78	126	65	96	161	60	107	167
Professors of music .. .. .	6	1	7	1	1	2	1	1	2
Publicans .. .. .	247	101	348	266	206	492	313	134	447
Saddlers, harness m'rs. .. .. .	19	25	44	32	50	82	29	36	65
Schoolmasters .. .. .	16	9	25	31	11	42	37	14	51
Shipwrights .. .. .	—	—	—	2	2	4	—	—	—
Shoe and boot makers .. .. .	74	188	262	106	190	296	101	176	277
Solicitors .. .. .	57	3	60	46	10	56	31	9	40
Stockbrokers .. .. .	12	5	18	19	3	22	18	4	22
Surgeons, physicians, dentists .. .. .	30	11	41	26	10	36	47	12	59
Tailors .. .. .	120	198	318	126	250	376	121	233	344
Timber d'l's & sawyers .. .. .	10	14	24	20	35	55	23	31	54
Tobaccoists .. .. .	53	56	109	44	76	120	54	65	119
Toy and fancy dealers .. .. .	9	22	31	13	23	36	18	22	38
Tradesmen's assistants .. .. .	86	17	103	75	18	91	72	9	81
Undertakers .. .. .	7	4	11	13	10	23	7	9	16
Miscellaneous .. .. .	415	167	582	97	52	149	123	66	189
Private .. .. .	205	19	224	270	57	327	288	45	333

4407 8561 7968 4735 4632 9357 4910 4405 9815

During the year 1905 there were 1,772 Limited Companies wound up, comprising:—

In the Year	Number of	1905		1904		1903	
		Liabilities	Assets	Liabilities	Assets	Liabilities	Assets
1886	5,714	538	5,181	1887	5,362	619	5,363
1888	9,217	1,008	8,209	1889	8,782	829	7,908
1890	7,676	894	6,982	1891	8,528	1,112	7,420
1892	9,609	1,129	8,479	1893	10,658	1,099	9,559
1894	10,507	1,098	9,414	1895	9,458	1,018	8,445
1896	8,843	919	7,924	1897	8,724	1,000	7,724
1898	8,895	1,080	7,815	1899	8,600	947	7,653
1900	9,224	922	8,302	1901	9,118	962	8,166
1902	9,821	964	7,967	1903	9,205	789	8,416
1904	10,340	888	9,357	1905	10,321	918	9,315

Report of the Inspector-General for the years ending December 31st 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, and 1904. England and Wales only.

No. of Cases	Liabilities	Assets	Estimated Loss to Creditors	
			1905	1904
1895	7,858	£11,897,212	£4,588,015	£8,309,254
1896	7,424	10,322,021	4,072,968	7,365,888
1897	7,222	9,659,113	4,606,571	6,498,150
1898	7,538	10,529,424	4,596,160	7,539,873
1899	7,067	9,248,429	5,898,765	7,528,171
1900	7,764	10,742,925	5,090,151	8,261,294
1901	7,618	10,794,761	5,497,457	8,214,206
1902	7,507	10,052,797	5,537,826	7,463,077
1903	7,908	9,675,282	5,041,101	7,322,560
1904	8,681	12,086,267	5,770,387	9,271,780

## Society of Accountants and Auditors.

THE following are the results of the December examinations:—Final Honours candidates in order of merit (the first ten receive each a prize and a certificate of merit).—H. Kirk, Bolton; G. N. Worters, London; E. J. Blevin, Liverpool; H. Wildgoose, Manchester; P. E. Slack, London; A. R. Green, London; P. J. Dawson, Birmingham; W. H. Grainger, London; A. A. Kilner, Manchester; and G. H. Richardson, London. Alphabetical order.—H. C. Addiscott, Plymouth; F. E. Atkinson, London; A. E. S. Barker, West Hartlepool; W. H. Baskin, Dublin; A. A. Baster, Southampton; W. Blundell, Southport; J. C. Bolton, Blackpool; E. B. Boyd, London; E. B. Brown, London; H. I. Burrell, Eastbourne; H. M. Campbell, Bradford; J. A. Chapman, Manchester; W. Dudbridge, Stroud; H. R. Dutton, St. Helen's; W. H. Firth, Bradford; H. A. Garrad, London; C. E. B. Griffin, St. Helen's; J. H. Harding, London; P. A. Kimmins, Stroud; C. Leigh, Southport; H. E. Makeham, London; W. J. Pallot, Cardiff; W. J. Peirce, London; H. G. Read, Birmingham; J. Rees, London; J. L. Roberts, Carnarvon; H. V. T. Robinson, Wolverhampton; R. F. Scamell, London; C. Smirk, Preston; T. H. Soul, London; G. Stirling, Manchester; W. C. Tuke, Leeds; C. E. Underwood, Stroud; G. H. Walker, Halifax; J. H. Ward, London; W. H. Ward, London; L. Wilde, London; R. S. Windle, Barnoldswick; A. Wroot, Goole; J. B. Young, Manchester. (Eleven candidates failed to satisfy the examiners.) Equivalent to Final.—Alphabetical order.—F. H. Bennett, H. E. Chapman, H. J. Eldridge, T. F. Greves, W. Morris, A. Neill, J. P. Pattison, F. W. Stephens, A. C. Vincent, and J. H. Worrall, all of London. (Six candidates failed to satisfy the examiners.) In the Intermediate (honours) examination Albert Allen, Sheffield, obtains the prize and first place certificate.

## Obituary.

### Thomas H. Casey, F.C.A.

WE regret to announce the death of Mr. Thomas H. Casey, senior partner in the firm of Thomas H. Casey & Son, Chartered Accountants, of Pearl Buildings, Portsmouth, which took place on the 2nd inst. at his residence, 32 St. Peter's Grove, Southsea, after a very painful illness. The late Mr. Casey had practised in Portsmouth for the past twenty-seven years. He received his early training in the office of Messrs. Brett & Co., accountants, of Coleman Street, E.C., and became a member of the Institute of Chartered Accountants in 1880. His son, Mr. Arthur B. Casey, who was admitted into partnership in 1901, now succeeds him in the business. The deceased was widely known and respected in commercial circles. He leaves a widow, a son, and two daughters, to mourn their loss.

## Personal.

MR. J. TINDALL BUNCH, Chartered Accountant, announces that he has commenced practice at Imperial Buildings, Bridge Street, Walsall.

MR. NORRIS H. DEAKIN, Chartered Accountant, of Foster's Buildings, 22 High Street, Sheffield, announces that he has taken into partnership Mr. WILLIAM J. FURNIVAL, who served his articles with Mr. C. E. RIDDELL, of Sheffield, and has been admitted a member of the Institute of Chartered Accountants. The business will in future be carried on under the style of DEAKIN & FURNIVAL.

MR. F. W. DENSHAM, B.A., Chartered Accountant, has removed from Finsbury Pavement House, to "Filleigh," Westbury Road, New Malden, Surrey.

MR. WILLIAM R. GAFF, C.A., F.F.A., and Mr. R. TRISTRAM HARPER, A.C.A., announce that they have entered into partnership, and are now carrying on business as Chartered Accountants and Auditors, at 53 New Broad Street, London, E.C., under the style of GAFF, HARPER & Co.

MR. E. J. GARDINER, after forty years service, has retired from the firm of Messrs. C. F. KEMP, SONS & Co., as and from the 1st instant.

MR. LAWRENCE LORD, F.C.A., of Irwell Terrace, Bacup, announces that the partnership which has been carried on by himself and Mr. ARTHUR W. AKED, F.C.A., for so many years, as Chartered Accountants, under the style of F. HUNTER, GREGORY & LORD, has now come to an end by effluxion of time. The business will be continued by Mr. LORD and his son, Mr. J. ROBERTS LORD, A.C.A., under the same style as heretofore.

MR. DAVID SIBBALD, Chartered Accountant, has been appointed a Public Auditor under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893.

MR. W. A. TOLLEY, Incorporated Accountant, Kidderminster, has been appointed a Public Auditor under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893.

MESSRS. GEORGE A. TOUCH & Co., Chartered Accountants, Basildon House, Moorgate Street, London, E.C., have admitted Mr. LESLIE WHITTEM HAWKINS, A.C.A., to be a member of their firm.

MR. ALBERT H. WARRINER, A.C.A., announces that he has taken into partnership Mr. J. FRANCIS MARRIAN, A.C.A. The practice in future will be jointly carried on at Bank Chambers, Temple Row, Birmingham, under the style of WARRINER, MARRIAN & Co., Chartered Accountants.

MR. J. W. WATSON, Chartered Accountant, announces that he has commenced to practise at 8 Priestgate, Darlington.

MR. W. PERCY VICKERMAN, Chartered Accountant, announces that he has commenced practice at 9 Parliament Street, Hull.



T. A. WELTON, Esq., F.C.A.



## Chartered Accountants' Golf Club.

## Annual Tournament.

TWENTY-SIX couples have entered for the Annual Tournament of the Chartered Accountants' Golf Club. Matches will be decided by one round of eighteen holes, and the odds between the competitors will be three-fourths of the difference between the handicap allowances. Matches are to be played by mutual arrangement, and the first round must be completed by February 19th. Three couples have received byes in the first round, and accordingly pass into the second round. The draw is as follows;—

## FIRST ROUND.

	Handicap
A. D. Barber, Sheffield .. ..	(5)
v. F. L. Fisher, London .. ..	(10)
J. W. Barber, Sheffield .. ..	(4)
v. J. Gane, London .. ..	(18)
E. J. Husey, London .. ..	(15)
v. W. H. King, London .. ..	(17)
T. Wise, London .. ..	(14)
v. H. Wingfield, London .. ..	(7)
D. D. Robertson, London .. ..	(11)
v. A. O. Miles, London .. ..	(9)
A. H. Heap, Sheffield .. ..	(12)
v. R. S. Bain, London .. ..	(7)
H. Champness, London .. ..	(9)
v. G. Dixey, London .. ..	(16)
A. H. King Farlow, London .. ..	(3)
v. G. M. Gilbert, London .. ..	(11)
A. Page, London .. ..	(14)
v. H. Walters, London .. ..	(15)
H. Kidson, Junr., Manchester .. ..	(5)
v. W. F. Mapleston, London .. ..	(6)
G. Gordon, Leeds .. ..	(11)
v. T. D. Cocke, London .. ..	(15)
W. W. Read, London .. ..	(10)
v. H. M. Smith, London .. ..	(5)
C. F. Bowker, Ealing .. ..	(8)
v. S. P. Derbyshire, Nottingham .. ..	(17)
T. G. Mellors, Nottingham .. ..	(plus 1)
v. W. Walker, London .. ..	(10)
E. M. Robinson, London .. ..	(16)
v. Clare Smith, Clifton .. ..	(10)
A. H. Downes, London .. ..	(8)
v. S. C. Leonard, London .. ..	(9)
J. Harris, London .. ..	(17)
v. D. Hill, London .. ..	(14)
C. F. Burton, London .. ..	(11)
v. M. Jenks, London .. ..	(15)
Sir John Craggs, London .. ..	(10)
v. A. Goddard, London .. ..	(17)
H. W. D. Soper, London .. ..	(9)
v. F. Hyland, London .. ..	(17)
D. Forde, London .. ..	(8)
v. H. F. Turner, Epsom .. ..	(5)

	Handicap
E. C. Brown, London .. ..	(10)
v. T. M. Till, London .. ..	(13)
F. W. Pixley, London .. ..	(18)
v. W. E. Mounsey, Liverpool .. ..	(20)

## SECOND ROUND (BYES).

E. Cooper, London .. ..	(12)
v. J. Ford, London .. ..	(18)
J. G. Fowler, London .. ..	(scratch)
v. D. Hill, Junr., London .. ..	(6)
J. D. Pattullo, London .. ..	(11)
v. S. Cronk, London .. ..	(7)

A friendly game of football, under the title of "Presidents v. Vice-Presidents," between teams from the offices of Messrs. Gane, Jackson, Jefferys, Wells & Co., and Messrs. W. B. Peat & Co., was played at Palmer's Green on Saturday last. A number of clerks from both offices accompanied the teams, and a pleasant and well-contested game ended in a narrow victory for the "Vice-Presidents" by four goals to three.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Jan. 5th, was 128, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 83; Deeds of Arrangement registered, 45. The respective numbers in the corresponding week of last year were: Bankruptcies, 103; Deeds of Arrangement, 62—total, 165; being a decrease of 37.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Jan. 5th, was 102. The number in the corresponding week of last year was 119, showing a decrease of 17.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Jan. 5th, amounted to £1,015,392, by way of addition to £1,419,265, previously issued by the same companies. The amount registered in the corresponding week of last was £2,979,087, showing a decrease of £1,963,695.

## The Profession in Scotland.

## Personal.

The firm of L. & R. H. Robertson, C.A., 58 St. Vincent Street, Glasgow, of which Hugh Brown, Junr., and Lawrence V. G. Robertson were sole partners, has been dissolved as at 31st December. Mr. Hugh Brown, Junr., has taken over the Chartered Accountant business, and



will continue the same at the same address, under the style of Robertson & Brown, C.A. Mr. Robertson has taken over the stockbroking business, and will continue it under the style of L. & V. G. Robertson.

Mr. W. S. Buttar, a member of the Edinburgh Society of Accountants, has now begun the practice of his profession at 536 Hastings Street, Vancouver.

Mr. Thomas Scott, Junr., a member of the Edinburgh Society of Accountants, has been appointed joint managing director of the Banco Commercial de Costa Rica, whose head office is in San José, Costa Rica.

### Will.

Mr. Francis More, of 59 Fountainhall Road, Edinburgh, Chartered Accountant, of the firm of Messrs. Lindsay, Jamieson & Haldane, of 24 St. Andrew Square, Edinburgh, who died on the 16th October last, aged sixty-seven years, left, exclusive of funds vested in him as the trustee, personal estate in the United Kingdom valued at £24,347, of which his interest as a partner in the firm of Messrs. Lindsay, Jamieson & Haldane has been valued for probate at £12,275.

### Scottish General Examining Board.

At the recent half-yearly examinations held by the General Examining Board, there were 88 candidates for Preliminary Examination, of whom 51 passed and 37 failed. Thirty-two obtained exemption from this examination in respect of school-leaving or other equivalent certificates. Of 69 candidates for Intermediate Examination, 51 passed and 18 failed; and of 62 candidates for Final Examination, 25 passed, or completed the examination, 12 passed the first division only, and two the second division only, while 23 failed in the examination. The following candidates passed with distinction:—Charles Hewitt Lawson, George Duncan Stewart, and David Young.

## COURT OF SESSION.

### Edinburgh—Outer House.

#### Before Lord Dundas.

Jan. 2.

#### W. J. Paterson v. J. Bennet.

*An Accountant's Business Account.*

Judgment was issued in an action by William Guthrie Paterson, C.A., 19 South Castle Street, Edinburgh, against Joseph Bennet, gas meter manufacturer, 41 Hermitage Gardens, Edinburgh, to recover payment of £116 19s. In 1899 the defender became a partner with a Mr. Garth in the firm of Handel, Garth & Co., music sellers, Edinburgh, and the amount sued for was in name of remuneration for work alleged to have been done and services rendered between January 1903 and April 1905.

Lord Dundas found that the amount which the pursuer was entitled to recover from the defender in full of his whole claim was £69 5s. He accordingly decreed for that

sum, and found the pursuer entitled to expenses, but modified to one-half of the taxed amount. Dealing with the question of expenses, his Lordship said that if a pursuer brought an action of damages for £116 19s., and succeeded in recovering £69 5s., he would as a rule be entitled to his expenses. But where a detailed account was sued upon, and the pursuer while recovering a substantial sum, was unsuccessful upon some of the particular charges, including, *inter alia*, the largest single item in the amount, the position was, in his Lordship's judgment, different, and he thought that justice would be done in this case by allowing the pursuer his expenses, but modified at one-half of their taxed amount.

## Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
„ 21st „	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th „	..	..	..	..	..	..	3%
„ 28th „	..	..	..	..	..	..	4%

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## FOWLER & POTTIER, AUCTIONEERS, SURVEYORS, AND VALUERS

### CITY ESTATE AGENTS,

A. C. FOWLER, F.S.I.  
G. L. POTTIER, F.A.I.

35 WALBROOK, E.C.

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# INSTITUTE OF CHARTERED ACCOUNTANTS.

## LIST OF SUCCESSFUL CANDIDATES.

At the EXAMINATIONS held in NOVEMBER and DECEMBER 1905.

### PRELIMINARY EXAMINATION.

(Candidates who obtained a certain number of marks, in Order of Merit)

Name	Where educated
DAWSON, C. J., Birmingham ( <i>Prize</i> )	King Edward's High School
HORNBY, C. H., Great Malvern	Malvern College
ACTON, A. H., Wellingborough	Grammar School, Wellingborough
WHITEY, E. R., Clevedon	Mill Hill School
THISTLETHWAITE, B., Great Ayton	Leighton Park School, Reading
BOULD, H. S., Bristol	Bristol Grammar School
SPIBEY, J., Tottington, near Bury	Manchester School of Commerce
HADFIELD, K., London	Nottingham High School
MARSHALL, C. J., London	Bedford Modern School
BROWN, G. R., Winchester	Northgate School, Winchester
CAREY, C. M., New Malden	Kingston Grammar School
ADAMS, L., Bexley Heath	King's College
LLOYD, J., Farnley, Leeds	Kingswood School, Bath
OCOKE, W. P., London	Merchant Taylor's School
HARE, W., Blackburn	Blackburn Grammar School

(In alphabetical order)

ARNOLD, L. G., Saltaire, Yorks	Bradford Grammar School
BARR, A. J. A. W., London	Haberdashers' School, Hampstead
BELL, A., Newcastle-upon- Tyne	Dame Allen's Endowed School, Newcastle
BELL, E. J., London	United Westminster School
BENNETT, D. M., London	St. Edmund's College, Ware, Herts
BIGGS, R. L., Birmingham	King Edward VI. Grammar School
BLISS, C. C., London	City of London School
BOLE, J. E., Sheffield	Central Higher School, Sheffield
BURNHAM, G. N., London	Cranleigh School

(In alphabetical order)

Name	Where educated
CALDER, M. W., London	Westminster City School
CAVELL, L. A. S., Bristol	Clifton College
CHEW, R. L., London	Haberdashers' School, Hampstead
CLAYTON, H., Sutton, Surrey	Dover College
CLENCH, R. W. L., Wealdstone	Harrow School
COOPER, A. L., Hunstanton	Oundle School
DARBYSHIRE, J. S., Blackpool	Arnold House School
DAVEY, P. J., Gravesend	Skerry's Academy, Dublin
DAVIES, S. N., Northwood	Uppingham School
DENNY, C. K., Surbiton	Charterhouse
DENTON, W., Pool, near Leeds	St. Wilfred's Church School, Leeds
DOBINSON, S. R., Middlesbrough	King Henry VIII. School
FEARNLEY, W. H., Hampton Hill	Huntingdon House School, Teddington
FIELDING, E. T., Cardiff	Bedford County School
GILLIAT, F. L., London	H.M.S. "Britannia"
GILLIAT, F. M., Manchester	Hulme Grammar School
GOODALE, R. R., Peterborough	Laxton Grammar School, Oundle
GOODFELLOW, A. W., Norbiton	Charterhouse
GORDON, E. M. B., New Malden	Private Tuition
GRAHAM, H. H., Carlisle	Sedburgh School
GREAVES, H. L. L., London	Banister Court School, Southampton
GREEN, M. H., London	Private Tuition
GREENLEES, S., London	Malvern College
GRIBBLE, H., Weston-super-Mare	Clarence School, Weston-super-Mare
GROOM, C., Bury St. Edmunds	King Edward VI. School, Bury St. Edmunds
HART, K. E., London	Highgate Grammar School

PRELIMINARY EXAMINATION—*continued.*

(In alphabetical order)

Name	Where educated	Name	Where educated
HESKETH, J. E. B., Ashton-on-Mersey	Rossall School	RHODES, J. D., Morley, Leeds	Grammar School, Brid- lington, Yorks
HOLLINS, R. J., Dudley	Tettenhall College	RIDSDALE, G. E., Bloxwich	Wolverhampton Grammar School
HOLMES, H., London	Cathcart College, N.	ROSENTHAL, M. E., Manchester	Manchester Grammar School
HOLMES, R. B., London	Private Tuition	ROYLE, J., Junr., Manchester	Municipal School, Manchester
HOSSELL, S. H., Birmingham	King Edward's High School	RUSSELL, E., Holcombe Rogus	County School, Wellington, Somerset
HUNTER, G. G. G., Leamington	Warwick School	SIMPSON, T. L., South Shields	South Shields High School
IDE, P. A., London	Cowper Street School	SKEVINGTON, A. P., Ilkley	Kelly College, Tavistock
INSTON, H. J., Birmingham	Bourne College, Quinton	SMITH, F. G., West Bridgford	Nottingham High School
JOHNSTON, S., Manchester	Sale Grammar School	SMITH, G. J. D., Longfield, Kent	The King's School, Rochester
LATHAM, F., Manchester	Smart's Commercial College	SOTHERS, L. W., London	Highgate School
LATIMER, R. A., Liverpool	Liverpool Institute	STEPHEN, G., London	Nicolson Institute, Stornoway
LAWSON, H., Gosforth	Durham Grammar School	TANSLEY, S. A., Forest Hill	Alley's College, Dulwich
LEWIS, W. G., Liverpool	Liverpool College	TOWNEND, C. R., Goole	Thorne Grammar School
LUCAS, A. C., London	Alley's School, Dulwich	TURNER, O. L., Nottingham	Nottingham High School
MACK, J. J. C., Liverpool	Waterloo High School, Blundellsands	TYLDESLEY, B. J. J., Bolton	Central Higher Grade School, Bolton
MARBECK, W., Bolton	Private Tuition	TYRER, N., Bedford	Bedford Grammar School
McKNIGHT, R. A., Liverpool	Tettenhall College	VICKERS, E., Liverpool	Liverpool College
MERCER, A. J., Blackburn	Queen Elizabeth's Grammar School, Blackburn	VIPOND, F. R., Llanfairfechan	Manchester Warehouse- men and Clerks' Orphan Schools, Cheadle Hulme
MORELL, A. L., Nottingham	Grosvenor School, Nottingham	WALKER, E. H., Clevedon	Clarence School, Weston- super-Mare
NEISON, C. U., London	University College School	WARD, H. S., Northampton	Northampton Grammar School
NEVILL, P. B., Enfield	Mill Hill School	WELLESLEY-COLLEY, P., London	Stoneyhurst College, near Blackburn
NEWMAN, E. W. R., Bir- mingham	King Edward VI. High School	WEST, L. H., Cardiff	Skerry's Commercial and Civil Service College
NICKSON, E. H., Leicester	Wyggoston High School	WHITE, C. P., Normanton	Grammar School, Normanton
OLDFIELD, C. V., London	Dulwich College	WIDDOWS, H., Lytham	Pembroke House School, Lytham
ORFORD, H. S., Manchester	Hulme Grammar School	WOODCOCK, E., Deepcar, near Sheffield	Sheffield Middle Class School
PALMER, W. G., Cardiff	Cardiff School of Commerce	WOODCOCK, G., Hunmanby, E. Yorks	Pocklington School
PARSONS, R. C., Monkton	Dean Close School, Cheltenham	YOUNG, A. F., Bedford	St. George's, Llandudno
PATEMAN, H., Leicester	Alderman Newton's School, Leicester	YOUNG, W. H., Gt. Meols	Calday Grange Grammar School, West Kirby
PEARCE, J. C., London	Kingsbridge Grammar School		
PELL-ILDERTON, S., Manchester	Manchester Municipal Secondary School		
PIPER, T. G., London	Private Tuition		
PLUMB, N. W., Thornton Heath	Haileybury College		
POTTS, B., Stockport	Lucton School		
POWELL, F. A., Birmingham	King Edward VI. Grammar School		
REID, J. F., Southport	Scarlsbrick College, Birkdale		

55 Candidates failed to satisfy the Committee.

## INTERMEDIATE EXAMINATION.

Candidates who obtained a certain number of marks, in Order of Merit)

(In alphabetical order)

PEAKE, H. O. (*Prize*), (W. P. Price-Heywood), Manchester  
 { ANDERSON, A. C. (J. W. G. Hill), London  
 { HARGREAVES, A. (J. Stansfield), Colne  
 HAYTER, C. (W. Davison, Junr.), Sunderland  
 { FARROW, H. F. (A. H. Gibson), Birmingham  
 { HARRISON, E. (T. Broadhead), Dewsbury  
 SHANNON, E. C. A. (A. H. Caesar), London  
 OWEN, J. M. (C. E. Williams), Oswestry  
 { BERRY, W. S. (A. G. Deacon), Manchester  
 { WILLIAMS, H. M. (C. H. Hovey), London  
 { JONES, W. E. (G. Mahon), Liverpool  
 { PARKER, W. (G. Parker), London  
 DONALDSON, G. J. R. (L. Blake), Great Yarmouth  
 LITTLEBOY, W. E. (H. Lakin-Smith), Birmingham  
 AGAR, F. H. (B. T. Norton), London  
 GLAISTER, E. W. (J. Watson), Carlisle  
 GANTNER, S. A. (J. E. Wilson), London  
 ROBERTS, G. A. (E. E. Spicer), London

(In alphabetical order)

ADAMS, A. J. (C. G. Haswell), Chester  
 AKED, H. C. (I. H. Skinner), Halifax  
 ALLEN, S. (A. E. Warburton), Leicester  
 ANDREWS, H. U. (G. Emmerson), London  
 ASHWORTH, C. G. (M. L. Walkden), Manchester  
 BAKER, H. (D. Forde), London  
 BARNABY, E. W. (T. Walton), Manchester  
 BELLAMY, R. C. (J. Crake), Hull  
 BOTTOMLEY, R. (E. B. Edwards), Manchester  
 BOULTON, W. W. (W. V. Manley), Blackburn  
 BOWEN, L. P. (A. C. Bourner), London  
 BREWSTER, G. S. (H. Anstey), Bristol  
 CARTER, O. H. (H. P. Gould), Norwich  
 CLARE, J. W. (S. Jude), Liverpool  
 CLIVE, E. A. (A. W. Boston), Birmingham  
 COMBEN, R. J. (W. C. Brooks), London  
 COWDEN, V. P. (E. D. White), Liverpool  
 DAVIES, E. G. (T. A. Payne), Birmingham  
 DAVIES, G. J. (G. Proctor), Burnley  
 DUNN, F. J. (E. Bradshaw), Warrington  
 FLETCHER, T. W. (J. W. Davidson), Liverpool  
 FRANCIS, H. J. (A. P. Carryer), Leicester  
 FRASER, H. (W. Harris), London  
 FRITH, P. L. (E. H. Frith), London  
 GATES, J. S. (J. B. Gates), London  
 GRUNDY, E. (J. Jackson), Manchester  
 HARGREAVES, H. (F. A. Hargreaves), Burnley  
 HEAVEN, H. V. L. (J. W. Hinks), Birmingham  
 HODGSON, A. D. (A. Hooper), Bradford  
 HUGHESDON, H. C. (G. Clark), London

HUMPHRIES, H. W. (E. Hobbs), London  
 JONES, C. J. H. (A. T. Chew), London  
 JONES, H. S. (A. Whittaker), Manchester  
 JONES, S. H., B.A. (J. Robertson), London  
 JONES, W. H. (W. F. Flack), Liverpool  
 KIRTON, H. H. (W. R. Locking), Hull  
 LEE, H. (F. Winter), Newcastle-upon-Tyne  
 LEVITT, R. H. (C. E. Bradley), Scarborough  
 LINK, C. E. (T. Wise), London  
 LOUCH, H. T. (J. G. Andrew), London  
 MARTIN, C. N. (A. Miall), London  
 MATTHEWS, G. H. (W. H. Fox), London  
 MELLOR, L. G. (W. L. White), London  
 MILLER, A. A. (H. J. Page), London  
 MILWARD, T. E. (M. Leicester, Junr.), London  
 MORGAN, A. B. (T. S. Jones), London  
 OLIVER, F. O. (J. Benson), Newcastle-upon-Tyne  
 OVERELL, J. (W. B. Keen), London  
 PARKS, W. B. (A. H. Caesar), London  
 PARLE, J. A. (E. P. Chevalier), Liverpool  
 PEET, W. S. (B. Langley), Liverpool  
 PICKERING, J. G. (J. A. Sisson), Newcastle-upon-Tyne  
 POCKOCK, G. C. (A. C. Roberts), London  
 RAINE, R. C. (A. A. B. Walford), Stockton upon-Tees  
 ROBERTS, W. E. (J. Knill), Exeter  
 ROBINSON, H. A. B. (C. H. Mounsey), London  
 ROWELL, T. E. (M. Stainton), Newcastle-upon-Tyne  
 SANSOM, H. (A. I'Anson), Darlington  
 SCOTT, S. C. (J. Metcalf), Cardiff  
 SHERLOCK, W. N. (W. F. Flack), Liverpool  
 SIMPSON, W. (S. A. Reynolds), Reading  
 SINCLAIR, J. R. (A. Burgess), Manchester  
 SKILLINGTON, S. J. (J. H. Baker), Leicester  
 SMITH, F. E. (C. Cooper), Manchester  
 STEPHENS, C. A. S. (A. H. Downes), London  
 TEALE, V. G. (G. E. Teale), London  
 THOMSON, F. H. G. P. (J. H. H. Duncan), London  
 TOMASSON, H. H. (N. W. Burbidge), Sheffield  
 TUBBS, E. J. (J. E. Tubbs), London  
 VEALE, A. E. (A. J. Hill), London  
 WALTER, E. (E. C. Baldwin), Brighton  
 WARMSLEY, H. L. (E. J. Walker), Liverpool  
 WATSON, J. R. (A. S. Hooper), Bradford  
 WIDLAKE, C. L. (W. Holmes), Sheffield  
 WILLIAMSON, N. (W. H. Hughes), Huddersfield  
 WILSHIRE, H. B. (L. W. Wilshire), Derby  
 WOMERSLEY, C. F. (F. Womersley), Manchester  
 WOOD, C. C. (C. Keys), Birmingham  
 WOOD, R. B. (W. S. Blackburn), Leeds

## FINAL EXAMINATION.

(First Prize and Certificate of Merit)

GARNSEY, G. F. (N. G. Harries), Walsall

(Second Prize and Certificate of Merit)

DE ZOUCHÉ, R. C. (C. H. Mounsey), London

(Certificates in Order of Priority)

HADDON, R. C. (H. Grace), Bristol  
 ASHWORTH, H. (R. N. Carter), Manchester  
 LUNT, H. J. (J. Lunt), Manchester  
 WEBSTER, W. D. (H. C. Howard), London  
 MURGATROYD, G. B. (A. Shuttleworth), Manchester  
 DE PAULA, F. R. M. (C. F. Cape), London  
 BOSS, J. G. Junr. (T. Eytton), Newcastle-upon-Tyne  
 HIRST, W. H. (W. Dawson), Dewsbury  
 STORRS, L. C. (H. E. Sweeting), Cardiff  
 WELCH, W. (C. E. Bullock), Hanley  
 NIXON, H. H. (W. C. Atkinson), Leeds

(In alphabetical order)

ALEXANDER, G. (G. N. Monkhouse), West Hartlepool  
 ARMSTRONG, H. J. (J. J. Gillespie), Newcastle-upon-Tyne  
 ASH, G. H. (J. H. H. Duncan), London  
 BAILEY, J. V. M. (W. Mickelwright), London  
 BAXTER, A. J. (J. S. Cotman), London  
 BESWICK, J. F. (R. McNaught), Manchester  
 BISHOP, E. E. (E. K. Bishop), London  
 BLEASE, H. (G. H. Ashworth), Liverpool  
 BLORE, F. H. (S. P. Derbyshire), Nottingham  
 BOARDMAN, H. (E. Cooper), Manchester  
 BOLTON, H. O. (A. W. Macredie), Sheffield  
 BOWDEN, H. H. (T. Wallace), Newcastle-upon-Tyne  
 BOYD, W. R. (E. H. Turner), Grimsby  
 BRANDON, N. H. (C. D. Ross), London  
 BYRNE, A. J. (G. F. Toulmin), Preston  
 CANDLER, A. P. (L. Hardy), London  
 CLIFTON, T. E. (R. J. Ward), London  
 COATES, C. G. (H. P. Walters), London  
 COSSART, B. (W. Chaloner), Stockport  
 COWLEY, D. S. (T. G. Mellors), Nottingham  
 COWNEY, C. E. (J. W. G. Hill), Birmingham  
 CRAVEN, E. (A. H. Pownall), Manchester  
 CROGGON, J. F. S., B.A. (S. V. Tiddy), London  
 DANBY, S. (R. Sands), Nottingham  
 DAVIES, A. T. (W. Meacock), Newport, Mon.  
 DAVIES, E. E. (C. E. Dovey), Cardiff  
 DAVIS, H. McF. (A. W. Payne), London  
 DAY, A. F. (C. C. Baker), London  
 DICKINSON, E. (W. A. Rycroft), Newcastle-upon-Tyne  
 DUFFIELD, E. (T. F. Armstrong), London  
 EASTON, C. (G. A. Gale), Hull  
 EDWARDS, V. (W. C. Grant-Smith), Wolverhampton  
 EVENS, F. W. (R. H. Marsh), London  
 FLINN, T. (C. F. Finney), Liverpool  
 FREAME-BAKER, R. (W. H. Short), London  
 GARDNER, A. R. (J. A. Carllil), Hull  
 GILLESPIE, H. R. (R. Sands), Nottingham  
 GOODWIN, G. H. (T. Wood), Manchester  
 GREY, W. R. (E. N. Humphreys), Chester  
 GRUNDY, N. D. (Sir John Craggs), London  
 HAMP, J. (W. B. Keen), London  
 HART, S. W. (T. Ryder), Birmingham  
 HEDLEY, J. S. (J. A. Sisson), Newcastle-upon-Tyne  
 HENDERSON, I. M., B.A. (J. M. Henderson), London

(In alphabetical order)

HEWSON, W. K. (G. Parker), Sunderland  
 HOLLAND, T. W. (J. G. Fowler), London  
 HOOPER, R. (A. S. Hooper), Bradford  
 JACKSON, T. (G. C. Veale), Leeds  
 JONES, S. (R. J. Sissons), London  
 KING, W. F. (W. A. Kirby), London  
 KITSON, T. A. (J. Gilchrist), Middlesbrough  
 LANCASTER, J. H. L. (J. G. Langton), London  
 LANE, W. S. (W. R. Lane), Birmingham  
 LEPINE, C. H. (E. J. Palmer), London  
 LOCKING, H. W. (E. W. Shaw), Hull  
 LOVESY, A. C. (G. Morriss), London  
 LUCAS, G. H. (E. B. Winn), Birmingham  
 LUMB, L. (R. F. Miller), Barrow-in-Furness  
 MACNAUGHT, D. D. (J. Morriss), Manchester  
 MATTHEWS, J. H. S. (J. Todd), Preston  
 MILLONS, T. A. L. (H. W. Tash), Middlesbrough  
 MOORE, F. (J. W. Best), Sheffield  
 MOXON, G. A. (H. G. Blackburn), Leeds  
 MUNDELL, K. H. (J. M. Woodman), London  
 NICHOLLS, S. H. (A. H. Downes), London  
 NICHOLSON, A. E. (E. J. Walker), Liverpool  
 PAGE, A. A. (C. W. A. Tulloch), London  
 PERCIVAL, J. E. (R. Nye), London  
 POKING, W. M. (R. Rabbidge), London  
 PRICE, E. L. (E. C. Price), London  
 REMON, J. A. (G. H. Carter), London  
 RIGBY, A. G. P. (W. Davies), Preston  
 ROBINSON, J. W. (E. Cooper), Bolton  
 ROUTLEDGE, G. S., B.L. (T. G. Bowden), Newcastle-upon-Tyne  
 ROZELAAR, A. (R. Nye), London  
 SCOTT, W. E. (W. Scott), Hull  
 SHERIDAN, H. H. (S. W. Tubbs), London  
 SIDLEY, J. C. (T. Bowden), Newcastle-upon-Tyne  
 SINCLAIR, N. (E. Sparks), Newcastle-upon-Tyne  
 SINGLEHURST, R. B. (G. Nicholson), Liverpool  
 SKINNER, J. (E. H. Fletcher), London  
 SMALLEY, G. A. (H. W. Marten), London  
 SMITH, C. E. (S. Edds), London  
 SMITH, R. E. (W. T. Ogden), London  
 SNEHAM, J. S. (T. Bee), Preston  
 SOUTHCOMBE, R. (S. Pears), London  
 SPRY, J. H. S. (W. E. F. Thorp), Devizes  
 STEPHENSON, G. C. (L. E. Halsey), London  
 STRAY, A. F., M.A. (R. Stray), London  
 STRETCH, L. G. (J. C. Bladen), Hanley  
 SWAYNE, H. A. H. (E. G. Burnett), Southampton  
 TAYLOR, J. S. C. (S. Taylor), Swansea  
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 TIMMINS, F. O. (T. J. Agar), Birmingham  
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 VENABLES, B. C. S. (A. W. Good), London  
 WEBB, G. R. (W. L. Ellis), London  
 WHITE, J. (T. E. Y. Berrey), London  
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 WILLIAMS, S. (E. Williams), Manchester  
 WILSON, W. (J. H. Bourne), Liverpool  
 WOMERSLEY, J. W. (J. Womersley), Manchester  
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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS

AND

ACCOUNTANCY THROUGHOUT THE WORLD.

VOL. XXXIV.—NEW SERIES.—No. 1624.] SATURDAY, JANUARY 20, 1906. [PRICE 6d.

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### BOROUGH OF EALING.

#### APPOINTMENT OF AUDITOR.

THE Corporation invite applications from the Members of the Institute of Chartered Accountants, or of the Incorporated Society of Accountants, to audit the accounts of the Corporation in such manner as the Corporation direct in addition to the Auditors appointed under the Municipal Corporations Acts.

The duties will be left to the discretion of the person appointed, but he will be required to report half-yearly on the audit of each half-year's accounts, and to report, as and when occasion shall require, on any matters which shall have come under his notice which he considers require mentioning in the interests of the Borough, or which may be referred to him by the Council.

The salary offered is fifty guineas per annum, and the appointment will be made in the first instance for one year.

Applications, with copies of not more than three recent testimonials must reach me on or before Monday, the 29th inst., addressed to me at the Town Hall, Ealing, London, W., endorsed outside "Re Auditor."

Canvassing members of the Council will disqualify.

GEO. E. BRYDGES,  
Town Clerk.

16th January 1906.

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### Leading Articles.

#### The Utility of Statistics to Accountants.

CONSIDERABLE interest attaches to the recent meeting of the Nottingham Chartered Accountants Students' Society, which was held on the 1st ult., in that upon this occasion Mr. T. A. WELTON, F.C.A., had been prevailed upon to deliver one of his valued addresses to students. As stated in our issue of the 16th ult., when a full report of the proceedings was given, the title selected by Mr. WELTON for his paper was "The Interest and Utility of Statistics to Accountants"; a sufficiently interesting subject in itself, but to this the lecturer appended some notes on past experiences which, we venture to think, are at least of equal interest, and perhaps of even greater practical value.

We quite agree that the world's knowledge of the world's trade would be improved if

something approaching to international Ledgers could be made out displaying the course of internal and external trade; and certainly some attempt to compile such Ledgers upon the lines laid down by Mr. WELTON should prove a very fascinating occupation for the spare time of the more earnest accountant students. We must confess, however, that we are less hopeful than he appears to be as to the practicability of ever producing anything even approximately approaching to reliable results from the available data, when we consider how full of pitfalls are the Board of Trade figures with regard to export trade. For instance, for years anthracite was scheduled among other minerals instead of as a variety of coal; and the further students proceed with their studies the less disposed will they probably be to rely upon any conclusions that may be drawn from a comparison of such data, no matter how plausible or convincing they may *primâ facie* appear to be. Possibly, one of these days, the science of collecting and marshalling figures for statistical purposes may be pursued upon sufficiently practical lines to allow those figures to be safely employed for the purpose of deducing conclusions that were not immediately in the minds of the compilers, but as respects the present standard of statistical science, at all events as practised by Government officials, any such procedure would appear to be attended by considerable risks. So far as internal trade is concerned, now that internal duties have been abolished it seems difficult to imagine how any reliable basis can be formulated for the compilation of statistics. Mr. WELTON has very properly drawn attention to the fact that that which is one man's finished product is often the raw material of another, and that therefore if trade figures be merely

aggregated an altogether inflated result is likely to be produced; but so far as figures of internal trade are concerned, the chief difficulty appears to be the entire absence of any data whatever save in respect of that comparatively insignificant minority of industries where returns have of necessity to be compiled for excise purposes.

We trust, however, that these words of caution upon our part—which we think necessary to warn the beginner against attaching undue importance to the result of his labours—will serve, by enhancing the difficulty of the problem, to direct rather than to discourage accountant students. And if the study of what we may call the more abstruse problems in statistics should prove, as it well may, entirely beyond the mental capacity of the average accountant student, that is, of course, no reason whatever why he should not with the greatest possible advantage to himself pursue its study upon a lower plane in the systematic and scientific tabulation of the results of the various undertakings in which he is either directly or indirectly interested. For many purposes these records can be most graphically preserved in the form of Curves, and where the benefit to be derived from the record is that to be expected from the watching of a tendency, the outline of a Curve will probably give a much more reliable conception of the true state of affairs than any tabular statement of mere figures can be expected to do. We need, however, hardly add, save for the benefit of the absolute beginner, that unless all corresponding Curves are systematically drawn to scale and the chart extended down to the zero line, the result is likely to be something worse than merely so much labour wasted.

Upon the subject of his past experiences in some important matters of almost national interest Mr. WELTON effectively summarised the object of his selection by recommending his hearers always to have a policy after due deliberation, and not to halt between two opinions; adding that those who do not know what they want are very likely to fail. These are excellent words of advice, and we know of no one more competent to utter them, and no one whose success may be said to have been more completely built up upon this single, and in itself comparatively simple, maxim. Some useful corollaries may, however, be deduced, and foremost among these one would suggest that the possession of a legal right by no means necessarily argues the desirability of enforcing it. Probably the wisest business man is he who knows when to compromise with advantage to himself; and in no sphere of life is that more true than with the accountant, who by nature of his calling has not infrequently to deal with persons and corporations who are physically incapable of yielding their pound of flesh until after they have been judiciously fattened for that purpose. The art of assisting a debtor so that at a later stage he may assist you is one that, in the nature of things, cannot be taught. But the mere fact that such an art exists and is capable of being pursued with advantage to its disciples, is a point that is well worth bringing to the notice of the student and the young practitioner, the more so as it would not be prudent to expect that legal advisers will err upon the side of unduly attempting to force this policy upon their clients. For it to be pursued with advantage, however, it must of necessity be pursued with perspicacity. The man who has a reputation for compromising is not he who

is likely to get the best of any bargain, hence the vital importance of Mr. WELTON's maxim that one should first deliberate and then formulate a definite policy before taking any action whatever in the matter on hand.

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#### The Local Government Board Inquiry.

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AT the meeting of the Council of the Institute held on the 10th inst., the President reported that he had received, and accepted, an invitation from the Right Hon. JOHN BURNS, President of the Local Government Board, to serve on a Departmental Committee he was appointing to inquire and report with regard to certain questions in connection with the accounts of Local Authorities. This, of course, confirms the announcement made in our issue of the 6th inst. so far as it goes, but an examination of the terms of the reference to the Departmental Committee will, we think, prove disappointing.

The inquiry is apparently to be limited to an inquiry and report with regard to the system on which the accounts of Local Authorities in England and Wales are at present kept—generally as to the system upon which such accounts should be kept, and in particular whether they should, as far as possible, be confined to mere accounts of receipts and payments, or not. Inquiry is further to be directed as to the regulations which should be made on the subject, regard being had to the necessity of showing accurately the amounts raised by local taxation and the purpose for which they are expended. It will be seen that nothing whatever is said upon the subject of Audit. The two questions are, of course, capable of being separated, and it may be argued that before accounts can be audited



they must in the first instance be prepared—a proposition which is sufficiently elementary to commend itself even to a Local Government official. Obviously, however, the precise form of accounts is a mere matter of “buttons and trimmings”; what is really of ultimate importance is that they should be accurate, and without an effective audit there can be no assurance of their accuracy. Accounts which in a perfectly clear and intelligible form misstate the facts are actually more harmful than accounts that are merely unintelligible. We trust, however, that the policy of the Department is merely one of proceeding slowly, and by clearly defined stages; that when the question of the form of accounts has been settled the proper steps to be taken to ensure that the accounts are duly verified before being published will be considered. And if that be so we think it likely that the inquiry will be expedited by taking the two subjects separately, even although they may be kindred matters, and thus quite capable of being referred to the same Departmental Committee.

The exact terms of the reference might, of course, be readily improved; and it is much to be regretted that the Committee's powers are to be of so restricted a character, for we think it not unlikely that the somewhat arbitrary limits that have been placed upon the inquiry will be found to militate against its utility. In making this statement, however, we should like to add that we do not regret that the discussion of the general question as to the desirability of municipal trading being continued or extended has been absolutely ruled out of discussion. The question is one which—whatever its merits may be—is entirely distinct from the present issue, which is of far too much intrinsic importance to be over-

shadowed by the larger and more debatable question of financial policy. What we mean is that the precise terms of the reference, as reported upon page 46 of our last issue, do not, if read literally, cover the field of an exhaustive inquiry into the matter of the accounts themselves; nor do they even touch upon the question of who shall for the future be held responsible for such accounts, and accountable for any deliberate misstatements that may appear upon the face of such published accounts. As an example of what we mean under the last-named heading, we may cite the case of the Cardiff Corporation, which issued its printed accounts purporting to be certified by an auditor whom its own officers had prevented from completing his audit, and who in point of fact had not certified those accounts. In the present state of the law there would appear to be no means of enforcing responsibility in respect of misstatements such as this; and although in that particular instance there may have been no harm done, it is obvious that such laxity is in the highest degree undesirable, and, if not controlled, will in all probability lead at some time or other to very serious irregularities. Of course, it would not be practicable to expect every member of a Council to be personally responsible for the published accounts, but we see no reason why the members of the Finance Committee, and the official (by whatever name he may be known) who is responsible to the Council for the accounts, should not be made in every respect as responsible as (say) the directors and other officers of an ordinary commercial company. Unless some such measure of responsibility is insisted upon, the whole inquiry naturally degenerates very quickly into a farce; for, as we stated at the commencement of this

article, the form in which accounts are presented is quite immaterial unless one can be assured of the reasonable accuracy of their substance.

The announcement of the *personnel* of the whole Committee will be awaited with considerable interest. The nomination of Mr. JOHN GANE, F.C.A., the President of the Institute, to represent its members' views could hardly have been improved upon, but it seems to us open to question whether by virtue of its numbers the Institute might not with advantage have been represented by more than one member. What is obviously, however, of far more importance is that there should be upon the Committee a reasonably effective majority of members trained in the practice of accounts, of whom as many as possible, but not necessarily all, should have had practical experience of the accounts of Local Authorities; for some advantage at least may be expected from the inclusion of one or two members who can approach the matter in a detached, and therefore strictly impartial, manner.

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#### Auditors under the Companies Acts.

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THE resolutions recently passed by the London Chamber of Commerce, and endorsed by the Council of the Institute of Chartered Accountants, relative to the appointment of auditors to joint-stock companies, were reproduced in our report of the last meeting of the Council, and will doubtless before now have received the attention of our readers. Without pretending to deal exhaustively with existing abuses they do unquestionably provide what in practice should prove to be effective remedies

for at least some of the more flagrant shortcomings of the existing statute law.

The first provision, that no one, other than the retiring auditor can be elected at a meeting without having first been nominated at least fourteen days previously, and having his name submitted in the notice convening such meeting, would effectually remedy such a state of affairs as that to which we referred in our issue of the 13th inst., when, if our information be correct, the shareholders voted for the appointment of a new auditor under the impression that they were re-appointing the previous one. There would be no possibility then of an auditor being superseded without the facts at least coming to the knowledge of the shareholders, while the compulsory nomination of the new auditor—at all events, if such nomination had to be accompanied by his consent in writing to act if appointed—would make it impossible for the names of reputable practitioners to be exploited for the purpose of securing the removal of auditors whose sole fault consisted in a fearless discharge of the duties imposed upon them. It would also make it considerably easier for the Council of the Institute to deal with cases in which the conduct of practitioners in the matter had been found open to question.

With regard to the second proposed provision, That the auditors named in the prospectus should be *de facto* the auditors of the company up to the first annual general meeting, we are inclined to think that for all practical purposes this is assured by the 1900 Act. If, however, there is still any doubt upon the point, then unquestionably it ought to be cleared up in the way indicated. It is, to our mind, nothing short of a "false statement", which ought to bring the directors within the terms of the Directors'

Liability Act, 1890, if they allow a prospectus to be issued representing that the accounts of the company will be audited by A. when they know perfectly well either that A. has refused to act or that they intend to appoint B. so soon as there is any work to be performed and any fee to be earned. It is quite bad enough when the names of respectable solicitors, brokers, or bankers are used without authority, but when it comes to a question of auditors the matter is of far greater importance from the point of view of the investor, as it can hardly be disputed that the personality of the auditor is far more likely to weigh with him in deciding whether or not he shall apply for shares. This would be so with prudent investors on the mere question of the importance of an audit *per se*; but apart from that, of course, most established practitioners have their own respective followers who are prepared to invest in undertakings with which they are connected, and would not think of subscribing otherwise.

The suggestion that, when there has been an offer of shares to the public, one at least of the auditors should be a professional accountant hardly seems to us to go far enough. We think that every prospectus inviting the public to apply for shares should state the name of the person or persons who will audit the accounts, and that one at least of those persons should be a professional accountant, the distinction being that the name of the auditor should be one of the conditions of the offer. In the present chaotic state of affairs it is probable that nothing more effective than "professional accountant" could be passed through Parliament, admittedly unsatisfactory as the distinction is and has proved itself to be in connection with the Building Societies Act, 1894. There is, however, this important difference, that whereas it

is, speaking generally, usual for building society audits not to be conducted by practitioners of the first rank save in the purely exceptional case of a few societies of the largest magnitude, it is equally unusual for company audits to be performed by other than Chartered Accountants. It is not very likely, therefore, that any serious attempt would be made to evade a provision of this kind, even although the precise wording might be ill-defined. There remains, of course, still to be considered the question as to whether a so-called private company is entitled to different treatment, and where the line is at present drawn between public and private companies our own view is strongly in the negative. The only definition of a private company which can be safely adopted without risk of abuse is in our view a company which imposes such restrictions on the transfer of its shares as to practically keep those shares in the hands of the original members, all of whom are known to each other. In such a case there might conceivably be objections to the compulsory audit by a professional accountant, although even then they would, we think, be somewhat far-fetched. But in the case of what at present masquerades as a private company, where the vendor usually controls the voting power and sits upon the board with none but his own nominees, an effective and independent audit represents the solitary safeguard that can, by any possibility, be vouchsafed to the investor who is so foolish as to place his money in such a concern when he is not already personally acquainted with those connected with it. But little attention has as yet been directed to the shortcomings of these so-called private companies, because by their very nature their irregularities and frauds affect but a very small number of investors in each case. One cannot

as a rule have a very sensational failure of a company whose working capital never amounted to more than a few hundred pounds; but, for all that, this class of company is one which, we think, requires the most careful watching, and for that reason we very much question the policy of permitting it the special privilege of being exempted from a professional audit.

Whether there is any prospect of these amendments becoming law in the near future is, of course, a very open question. It is satisfactory, however, to note that the London Chamber of Commerce seems to appreciate that the most serious omissions of the 1900 Act arise from the bareness of the outline of the scheme of compulsory audit which was then enacted.

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### Weekly Notes.

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**The Report of the Inter-state Commerce Commission.** It has been said that "in the whole of America there is no body so severely criticised by the great financiers and the many newspapers and reviews, which live only to emphasise their views, as the Inter-state Commerce Commission." Be this as it may, those students of political economy who rightly look to America to furnish new lights on many obscure problems, have come to recognise the good work which the Commission has done for the welfare of the public. At one time the railroad magnates were shrieking over what they called the attempt to ruin the railroads, but they have learned to understand that it is not of much use to indulge in yapping against a stone wall, and hence they are now roaring as gently as sucking doves. So much has the attitude changed that we are told that at a meeting of the executive officers of the western railway companies, held recently at Chicago, it was resolved that each company should bind itself to inform the Commission of any acts which should thereafter be committed by any other company in violation of the law, and that a committee of representatives of western freight associations should be formed to watch and report. This move in the direction of the suppression

of rebates and illegal preferences may have been made with the idea of showing that any further legislation, as foreshadowed by President Roosevelt, is unnecessary; but, in any case, the change of front is significant. The report of the Commission suggests an extension of its powers rather than fresh legislation, and although the precise difference may not be quite so apparent here as on the other side of the Atlantic, the reasoning is doubtless sound. It will be remembered that the main object of the Commission was to prevent the very reprehensible practice of discrimination, or the unfair preference given by railway and other transport companies to one section of shippers over another, which is quite a product of the huge industrial combinations of which our cousins are so enamoured. With this idea in view power was given to the Commission, upon complaint, to declare a rate unreasonable, and it was imagined that this power included the fixing of a rate that *was* reasonable; but, on the latter point being contested, the contention of the Commission failed. In the draft Bill appended to the report this defect is sought to be remedied; but the President's clever suggestion, that where a special rebate is discovered the Commission should have power to declare the lower rate in force for a fixed period for all shippers over the lines of the company concerned, does not appear to have been adopted. What makes this matter of discrimination so difficult to handle is the fact that the mammoth trusts and the big railroads are often controlled by the same interests, and we have recently had an unmistakable interpretation of what the American magnate understands by "control." It is interesting to note, in passing, that the Commission's investigations established the fact that undue preference has been given to shippers, who perform part of the transport by means of private wagons, by means of over-payment for this service. The small trader, however, and those among the American public who really desire to see a more impartial spirit in public affairs, will welcome the labours of the Commission towards this end; and in this country, as we have said, the work is being watched with the greatest interest, for the remedies may be required here some day.

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**The November Examinations of the Institute.**

The results of the November examinations of the Institute, which we announced in our last issue, show a slight falling-off in the total number of candidates as compared

with May of last year, the aggregate figures being 522 and 579 respectively. There were 40 less candidates for the Preliminary Examination, and 42 less for the Intermediate, but on the other hand the number of students competing for the Final Examination showed an increase of 25. In the Preliminary roughly 33 per cent. failed—a distinct improvement upon May. At the Intermediate Examination the percentage of failures was practically the same as in the previous half-year—namely, approximately 38 per cent.—but the Final shows an improvement, the percentage of failures being roughly 37 per cent., as against 42 per cent. in May. Especial interest attached to the Intermediate Examination upon this occasion in that the Robert Fletcher prize was to be competed for for the first time. In the result, however, it was not awarded, as Mr. H. O. Peake, of Manchester, who obtained the first place, was over the age limit laid down by the rules. The prize will accordingly be again competed for in May. Those of our readers who have from time to time been inquiring whether it would not be possible to expedite the publication of the examination results will be pleased to learn that the Council has asked the Examination Committee to again consider whether this would not be possible. Obviously, as the date of the examinations has been advanced by a clear three weeks, it would be possible to announce the results three weeks earlier without hurrying matters more than they used to be hurried up till quite recently. Moreover, bearing in mind the fact that the first fortnight in January and July are probably the most busy fortnights with the majority of practitioners, the additional time would afford no practical convenience to examiners themselves. However that may be, we trust that when the matter is reconsidered by the Examination Committee, it will find that the difficulties in the way of this useful reform are not insuperable.

**The Audit of Municipal Trading Departments.** Our contemporary *The Municipal Journal*, replying to a correspondent, expresses a doubt whether Borough Auditors are legally entitled to audit the general accounts of the electric light and tramway departments of their municipalities. The question is one of some interest, for, of course, if our contemporary's view should prove to be correct, there is no provision whatever for the audit of those departments of the local authority where a competent audit would prove most valuable. At the same time it cannot, of course, be

very seriously suggested that the exclusion of these accounts from the elective audit would be much of a public calamity.

**Local Government Board Audits.** A correspondent has forwarded us a copy of a letter received by him from the City Accountant of an important Irish corporation, who states that his (Government) Auditor confines himself strictly to vouching receipts and payments, and will not look at the Journal. This case, we imagine, is by no means unusual, but it clearly shows the absurdity of expecting any useful result from a so-called audit conducted upon such imperfect lines.

**Post Office Cheques.** Since the beginning of the year the Swiss Post Office has opened upwards of one thousand deposit accounts in its Banking Department. The system in force differs radically from anything obtaining in this country. Under it the Post Office will, upon application by a customer, transfer the desired amount from his account to its account with the payee. In consequence no documents of value have to pass through the post, with its attendant risks. The system can, of course, only be effective where both parties to the transaction have an account with the Post Office Bank, but in view of the conveniences offered (more particularly in a country like Switzerland, where banking facilities are not very highly developed), it will doubtless have the effect of causing the majority of business houses to open accounts.

**The Rights of Debenture-holders.** Commenting upon the announcement that a receiver and manager has been appointed of the property and assets of a brewery company, in the interest of debenture-holders, our contemporary *The Law Journal* draws attention to the weak position of all debenture-holders, who have practically no means of ascertaining the financial position of the borrowing company until perhaps matters have so far advanced as to make it probable that a loss of principal or interest, or both, has been sustained. In the ordinary way, of course, the right of debenture-holders to intervene does not begin to arise until their security is in jeopardy, and this theoretical statement of the position, which is to be found in most text-books on the subject, may be supplemented by the statement that until there has

been actual default it is extremely difficult, if not impossible, for debenture-holders to obtain the appointment of a receiver and manager save with the consent of the defendant company. From these facts it seems to us that the reasonable conclusion to be drawn is that investors should not take debentures in a company unless they are satisfied that there are sufficient immovable assets to cover the aggregate amount of their claims, even at a forced realisation. If there is not sufficient margin of security for this rule to be applied, it seems to us that the security is insufficient for an issue of debentures, and that prudent investors should leave it alone altogether. Unfortunately in the past these principles have not been acted upon.

#### Uniform Municipal Accounting.

In connection with the inquiry recently instituted as to the accounts of local authorities, it is of interest to note that a uniform system of municipal accounting exists in the States, and has already been applied there to a number of cities' accounts, although first started less than five years ago. The latest example to hand is the accounts of the City of Pawtucket, R.I., which have lately been overhauled by Messrs. Harvey, Chase & Co., of Boston, who invite us to critically examine the forms, and to comment upon them in our columns. We hope to have an opportunity of discussing the form shortly in an early issue, but in the nature of things we cannot pretend to be fully informed as to all the detailed requirements of American cities' accounts.

#### Manchester Failures in 1906.

Mr. J. Grant Gibson, the Official Receiver for Manchester and district, has prepared a report of local failures during the past year. The total number of receiving orders made was 136, as compared with 172 in 1904. In only 31 cases was a professional trustee appointed. The number of cases closed during the year was 120, and in these the net assets amounted to £8,400, of which £5,122 was received by creditors. In 69 cases dividends were paid, and 51 cases were closed without any dividend to the ordinary creditors. The average net assets per estate were £70, and the ratio of costs to assets was 37 per cent. These figures, it seems to us, sufficiently explain the relatively small number of non-official realisations. The great majority of the estates clearly were too small or too straightforward to call for professional assistance.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### Income Tax.

*To the Editor of The Accountant.*

SIR,—I have read with much interest the lecture given by Mr. C. E. Isaacs before the Chartered Accountants Students' Society of Sheffield, and with most of his suggestions I am in cordial agreement.

Under the heading "Treble Duty" Mr. Isaacs comments upon the recommendation of the Departmental Committee that a surcharge should be legally permissible at any time within three years from the end of the year of assessment. He points out that under such a clause, treble duty might be obtainable for each of the three years in question, thus virtually giving power of recovery for nine years. This recommendation was little commented upon, probably owing to the fact that but few outside the Government service saw the full meaning of it, and Mr. Isaacs certainly deserves the thanks of taxpayers for calling attention in a public manner to the construction that may be put upon such a clause in a new Finance Bill.

I note the subsequent passage in his lecture to the following effect:—"Double duty would be practically equal to six years' single duty, and co-extensive with the period provided for in the Statute of Limitations." Does Mr. Isaacs advise a surcharge to the extent of double duty for three years—i.e., the equivalent of six years' single duty? If so, I should like to point out that, when the boot is on the other leg, rectification of assessment can only be obtained by the taxpayer within *twelve months* of the end of the year of assessment, and in many districts only within *six months* of the same time. If further powers are given to the Crown, the taxpayer should, I submit, be similarly benefited by extension of the time during which he may apply for rectification of his assessment.

It may be objected that the professional man or trader is fully conversant with his own affairs, and that,

therefore, subsequent rectification should not—in the bulk of cases—be necessary. This, even if true, would not be a sufficient justification for giving the Revenue power to recover the equivalent of six years' tax, while the taxpayer could recover for one year only. In the experience of accountants and others who have dealt with a large number of income-tax assessments, it has been found that the bulk of the so-called "false returns" are errors due to lack of knowledge of the items properly chargeable as business expenses. This lack of knowledge on the part of traders has been pointed out at some length by Mr. Isaacs, so it is unnecessary to mention more than the names of a few of the principal items which are frequently debited in error—*e.g.*, various Depreciations, Interest, Income Tax, full (not two-thirds) Rent, Living Expenses, Life Insurance, Partners' Drawings, &c.

Yours faithfully,

T. HALLETT FRY.

London, 10th January 1906.

#### Establishment Charges.

(To the Editor of The Accountant.)

SIR,—I must thank you for kindly inserting my letter in the current number of *The Accountant*, and shall be glad to have your opinion on the matter if this is the course you adopt. If not, perhaps you would be kind enough to tell me in what way I can obtain the required information.

I am, dear Sir, yours faithfully,

11th January 1906.

F. L. D.

[Our correspondent should refer to our issues of June and July 1905.—*Ed. Acct.*]

#### Licensing Act and Income Tax.

(To the Editor of The Accountant.)

SIR,—I should be obliged if you, or any of your readers, would inform me, through the columns of *The Accountant*, whether sums paid as compensation under the Licensing Act, 1904, are allowed as deductions from profits for the purpose of income-tax?

Yours faithfully,

11th January 1906.

LICENSE.

[The question has not been decided, but we think they should be claimed as deductions.—*Ed. Acct.*]

#### Executorship Accounts—Apportionment.

(To the Editor of The Accountant.)

SIR,—With regard to the case as quoted by your correspondent "J. P.," I have understood that a continual dabbling with the estate for the benefit of

the remainderman to the detriment of the life-tenant or *vice versa*, would not be upheld in the Courts; and in such case an apportionment would be ordered.

Will your correspondent kindly say where the case of *Re Duff; Muttibury v. Muttibury* is reported?

Yours faithfully,

January 13th 1906.

C. J.

#### Legislation for the Profession.

(To the Editor of The Accountant.)

SIR,—Under the heading of "Professional Misconduct," in your issues of the 14th and 21st October, you discuss at length, and unfavourably, certain clauses of the Bill introduced in Tasmania, during the last session of Parliament, to "provide for the registration and regulation of public accountants" in this State.

The Bill has been "dropped" for the present, so that it is of no utility to now discuss it further. I write merely to say that it was framed upon the Transvaal Ordinance, the wording of it being almost identical therewith, especially as regards the clauses you especially refer to, and this fact must surely have escaped your notice, when penning your recent articles.

Of the Transvaal Ordinance you seem to have conceived a favourable impression, if one may judge by your article thereon in your issue of 24th September 1904, in which you say (*inter alia*):—

" . . . And if (as we have no reason to doubt), the Ordinance is found to work well in practice, a strong argument can thus be put forward, in favour of its extension elsewhere."

These words seem somewhat at variance with the views you express on the Tasmanian Bill, although the wording thereof is almost precisely the same.

Yours faithfully,

J. B. HICKSON.

Hobart, Tasmania, 6th December 1905.

#### Small Hotels and Income Tax.

(To the Editor of The Accountant.)

SIR,—In respect to your correspondent "H. C. R.," will you permit me to say that when a part of a dwelling house shall be used for the purposes of any trade, profession, &c., the Commissioners shall allow a sum *not exceeding two-thirds* of the rent *bonâ fide* paid, *vide* 5 & 6 Vict. c. 35, s. 101.

It is, of course, a great hardship that this should be, as it is easy to imagine cases where a single man might own and manage a hotel of 100 rooms, whilst he personally inhabited but two or three of them. The hardship is almost greater in the case of the boarding-house or

lodging-house keeper, where the owner of the business is practically a species of working housekeeper.

Yours faithfully,

T. HALLETT FRY.

London, 15th January 1906.

#### Accountants Touting for Business.

(To the Editor of The Accountant.)

SIR,—Enclosed we beg to send for your perusal letter received by a Liverpool solicitor this week from a London Chartered Accountant, which will probably interest you. We believe it is a regular practice of the firm in question to solicit this registration of deeds of assignment, and, in our humble opinion, it is extremely undignified on the part of a member of the Institute. The client they mention, Messrs. A. B. & Sons, we may state, are creditors for the paltry sum of £2 19s. 4d.

Yours truly,

X. & Co.

6th January 1906.

Dear Sir,

Re \_\_\_\_\_, of \_\_\_\_\_.

As we shall not be attending the meeting of creditors herein we have asked our mutual friends Messrs. X & Co. to represent us on behalf of our friends, Messrs. A. B. & Son, Lim.

If a deed is agreed to might we suggest that you send the same to us for the purpose of registration? We like to see to this kind of work for our friends in the provinces, as it not only keeps us in touch with them but enables us to earn a little fee.

Yours faithfully,

Z. & Co.

C. D., Esq.

#### The Rights of Partners *Inter se*.

(To the Editor of The Accountant.)

SIR,—It is indeed flattering to find myself linked with Mr. Welton and Professor Dicksee in an invitation for a further expression of opinion on this question.

In the joint letter of one of my partners and myself, which appeared in your issue of 18th November last, an endeavour was made to summarise the position of affairs in this connection, but the letter from Daniel Patrick prompts me to try again.

Your correspondent writes:—

“Mr. Dawson laid the case clearly by means of his illustrations, but he did not complete it. He gives Garner's share as £2,078 and Murray's as £262. But each partner has already contributed £212 to these amounts, so that the amounts actually receivable are £1,866 and £50.”

It would be interesting to know how a case can be stated clearly which is not completed. As a matter of

fact, it was completed—nor did I give the figures alleged. The obvious misprint of an “equals” sign instead of a “minus” sign, corrected in a subsequent issue, should not have misled Daniel Patrick, for the figures given were really those he now mentions as being the correct ones. He asks why I did not, in illustration No. 3 (b), transfer the deficit to the three Capital Accounts. This was done in illustration No. 3 (a), and the reason why it was not done in No. 3 (b) was set out in the explanatory notes, and will be referred to again in the course of the present letter.

With regard to the distinction between Capital and Revenue losses, I take it that the losses of the firm as a whole are losses which need no such distinction. If the office fixtures stood in the books at £300 but realised £200 only; if the book debts realised £500 less than the book value; if the stock-in-trade was sold by auction in the winding-up proceedings and brought £200 less than cost: these, though shrinkages of capital items, are losses of the firm, and chargeable as such. But if after an adjustment of losses of the firm one partner becomes indebted to the other partners and is unable to meet the call upon him, such loss, according to Joyce, J., is not a loss of the firm, and must be borne by such other partners in proportion to their respective capital balances.

But if the deficiency of Wilkins is ignored and the available cash (only) is divided between Garner and Murray, *pro rata*, as to capital balances, is not that in effect a division of Wilkins' deficiency in the same proportions?

Suppose Daniel Patrick, instead of apportioning the available cash, first treats (as I submit he should) the £635 as a partnership loss, and divides it in thirds. Suppose he next divides the loss on Wilkins' account between the partners (as he evidently approves) in proportion to the respective capital balances of the other partners. Then the ultimate capital balances of the two partners become in aggregate exactly equal to the available cash. Thus we follow Daniel Patrick's own ideas of equitable methods, and remove his bookkeeping difficulty as to the ultimate disposal of the unrecovered balance due from Wilkins.

Thus:—

ORIGINAL POSITION.			
Capital Accounts.		Assets.	
Garner .. .. .	£ 2,500	Cash .. .. .	£ 1,916
Murray .. .. .	314	Wilkins (Overdrawn) ..	263
		Deficiency .. .. .	635
	£ 2,814		£ 2,814



STAGE 1.				STAGE 1.			
Capital Accounts.		Assets.		Capital Accounts.		Assets.	
	£	£	£		£	£	£
Garner	2,500		Cash	2,500		Cash	1,916
Less $\frac{1}{3}$ deficiency	212		Wilkins (Overdrawn)	263		Garner to pay in Cash	
		2,288	Add $\frac{1}{3}$ of deficiency	211		or in Account	212
Murray	314				474	Murray to pay in	
Less $\frac{1}{3}$ deficiency	212					Cash or in Account	212
		102					2,340
		<u>£2,390</u>			<u>£2,390</u>	Wilkins' Deficiency	474
							<u>£2,814</u>
					<u>£2,814</u>		

Now, if we distribute the £474 as to  $\frac{2}{3}$  and  $\frac{1}{3}$  respectively, we obtain:—

STAGE 2.				STAGE 2.			
Capital Accounts.		Assets.		Capital Accounts.		Assets.	
	£	£	£		£	£	£
Garner	2,500		Cash	2,500		Cash	1,916
Less $\frac{1}{3}$ deficiency	212			Less $\frac{2}{3}$ of £474,			
		2,288		say	422		
Less $\frac{2}{3}$ of £474,					2,078		
say	453			Less Contra Ac-			
		1,835		count	212		
Murray	314				1,866		
Less $\frac{1}{3}$ deficiency	212			Murray	314		
		102		Less $\frac{1}{3}$ of £474,			
Less $\frac{1}{3}$ of £474,				say	52		
say	21				262		
		81		Less Contra Account	212		
		<u>£1,916</u>			50		
					<u>£1,916</u>		
							<u>£1,916</u>

Surely there can be no bookkeeping difficulty about the ultimate disposition of the above balances!

But if it be, as I have already suggested, that the *Garner v. Murray* decision not only distinguishes between ordinary partnership losses and a loss caused by an insolvent partner not paying his debt, but also requires the solvent partners to bring into hotchpot their shares of the losses, the position would be as follows:—

All these results agree with those set out in my original letter, although they are arrived at by adjusting the *irrecoverable balances* instead of apportioning the *available cash*.

An attempt may now be made to summarise the whole position.

Illustration No. per letter 18th Nov.	Circumstances	Garner		Murray	
		Net Amount	How ascertained	Net Amount	How ascertained
1	Wilkins able to pay his debt	Receives £2,288	$\frac{2}{3}$ of £2,390	Receives £102	$\frac{1}{3}$ of £2,390
2	Wilkins being unable to pay his debt it is charged to remaining partners in the same ratio as they were entitled to share profits	Receives £2,051	£1,916 plus £135 paid in by Murray	Pays in £135	One half Wilkins' deficiency (£237) less £102 otherwise receivable (See No. 1)
3a	Wilkins being unable to pay his debt the remaining partners divide the available cash in the same proportions as they would have divided the augmented fund had Wilkins paid his debt—that is, in the same proportions as in Solution No. 1. ( <i>Supra</i> ).	Receives £1,835	$\frac{2}{3}$ of £1,916	Receives £81	$\frac{1}{3}$ of £1,916
3b	Wilkins being unable to pay his debt the remaining partners divide the available cash plus their own contributions to the firm's deficiency (i.e., other than Wilkins' deficiency), in the same proportions as they would have divided the still further augmented fund had there been no deficiency and Wilkins had paid his debt, subsequently deducting, of course, the contributions referred to.	Receives £1,866	$\frac{2}{3}$ of £2,340 less £212	Receives £50	$\frac{1}{3}$ of £2,340 less £212

Solution No. 1 calls for no comment, it is the effect of *Darby v. Darby*. No. 2 treats all losses alike. No. 3 distinguishes between losses of the *firm*, and losses occasioned by the default of a *partner* when adjusting the rights of the partners *inter se*, charging the former according to the proportions in which profits were shared, and the latter rateably to the Capital Account balances of the non-defaulting partners. No. 4 adds to No. 3 the further condition that the non-defaulting partners should not diminish such Capital Account balances by deducting the amounts of their contributions to the deficiency, but should pay such contributions either in cash or in account.

To some it may be difficult to recognise any difference between the incidence of a loss of the firm and that of a loss sustained by some of the partners thereof by reason of the default of another partner, but having a legal decision before us we must not disregard its existence.

Professor Dicksee stated in your issue of 18th November last that his reason for hesitating to accept the decision in *Garner v. Murray* was on account of the practical difficulty of distinguishing the losses in the manner required by the judgment. Personally I do not appreciate any such practical difficulty.

Daniel Patrick refers to Section 24 of the Act. This, I submit, is another "red herring."

Distinction may be necessary as between losses of the firm as a body and losses of some of the partners because of the default of another partner, but there is no distinction necessary in partnership law as between losses on Revenue Account, Capital Account, or otherwise. Office rent, depreciation of stock, loss on book debts, and loss on realisation of office fixtures on a dissolution are all divisible in the same proportions. In other words, neither the Partnership Act nor any of the decisions thereunder attempt to distinguish between Capital and Revenue losses—in fact, Sections 24 and 44 expressly assimilate them; but Joyce, J., in *Garner v. Murray*, on what he claimed to be the authority of Section 44 of the Act, *read as a whole*, did distinguish between losses of the firm and losses of some of the partners thereof because of the default of another partner after the adjustment of their rights *inter se*.

Yours faithfully,

SIDNEY S. DAWSON.

Liverpool, 15th January 1906.

(To the Editor of The Accountant.)

SIR,—In Dixon's "Law of Partnership" (1866) I find a report of *Darby v. Darby* which differs slightly from your correspondent Daniel Patrick's quotation from Pollock—the word "concern" is substituted for "capital" ("proceeds . . . divided according to their respective shares in the concern").

May it not be that these "shares in the concern" are shares in *profits* and not shares in *capital*?

The references given by Dixon are, "Per Kindersley, "V.C., in *Darby v. Darby* (25 L.J., Ch. 371, 376; S.C., 3 "Drew 495, 503)." The second *alone* is given in "Duckworth on Partnership," which quotes similarly to Pollock: Dixon's report seems more in accordance with the Act, which was said to codify and not to alter the law.

Yours faithfully,  
ARTICLED.

16th January 1906.

Profits Prior to Incorporation.

(To the Editor of The Accountant.)

SIR,—I wish to have your opinion on a point of company law.

A company incorporated 1st March 1905 takes over a private concern as from 31st December 1904. A Trading and Profit and Loss Account is prepared for the twelve months ending 31st December 1905.

After carrying to a Reserve Fund the estimated proportion of profit made between 31st December 1904 and 1st March 1905 there would, I take it, be no objection to the company paying a dividend for the whole year.

Your opinion would greatly oblige,

Yours faithfully,  
16th January 1906. COMPANY SECRETARY.

[So long as the dividend is not paid out of capital the company can call it what it likes.—Ed. Acct.]

## The Leicester Chartered Accountants Students' Society.

Syllabus—Spring Session, 1906.

### OFFICERS.

President—Mr. A. P. Carryer, A.C.A.

Vice-Presidents—Mr. G. S. Bankart, A.C.A., and Mr. J. H. Baker, A.C.A.

Hon. Secretary—Mr. F. S. Heath (with Messrs. Bland, Carryer, and McAlpin, St. Martin's).

1906.

Jan. 24 (Wed.).—Lecture, "Brewery Accounts and Audits." Mr. Herbert Lanham, A.C.A., (London).

- Feb. 14 (Wed.).—Lecture, "An Income-Tax Assessment." Mr. F. W. Preston, A.C.A. (Leicester).  
 Mar. 7 (Wed.).—Lecture, "Colliery Accounts." Mr. E. E. Price, F.C.A. (London).  
 „ 29 (Thurs.).—Lecture, "Sureties." Mr. Tinsley Lindley, LL.D. (Nottingham).  
 April 11 (Wed.).—Lecture, "Principal and Agent." Mr. Beaumont Morice, LL.B. (London).  
 „ 25 (Wed.).—Lecture, "The Sale of Goods." Mr. E. Huntsman, Solicitor (Nottingham).

The meetings of the Society will be held at Winchester House, 1 Welford Road, commencing at 7 p.m. prompt.

Classes on Law and Accountancy will be held weekly during the session, the Law subjects under the tuition of Dr. Tinsley Lindley (Nottingham), and the Accountancy under the tuition of Mr. S. R. Wilby, A.C.A.

## The Northern Chartered Accountants Students' Society.

### Second Annual Dinner.

THE second annual dinner of the Northern Chartered Accountants Students' Society was held at the County Hotel, Newcastle-upon-Tyne, on December 13th. Mr. John H. Armstrong, F.C.A., President, occupied the chair. There were also present Messrs. Thomas Bowden, F.C.A., W. C. Forster, F.C.A. (Vice-President), Thomas Fenwick, F. W. Dendy (Registrar of the Newcastle County Court), T. Y. Bramwell, Herbert Lanham, A.C.A. (London), F. C. Squance, F.C.A., Frank Marshall, A. T. Holey, G. Atkinson, A. Aitcheson, Hugh H. Bowden (Hon. Treasurer), Frank R. Dixon, A.C.A., John R. Hadaway, A.C.A., Thomas Vasey, A.C.A., J. G. Nixon, Junr., A.C.A., Joseph Miller, A.C.A., C. C. Pinkney, A.C.A., F. V. Spark (Hon. Secretary), J. S. Hedley, W. Patterson, W. E. Gillespie, J. C. Sidley, W. T. Grahamsley, F. T. Iveson, J. G. Boss, Junr., J. T. Iveson, A.C.A., N. Harrison, J. D. Macintyre, and C. M. D. Brown.

The loyal toast was proposed by the Chairman, and was duly honoured.

Mr. Hugh H. Bowden proposed "The Northern Institute of Chartered Accountants," coupled with the name of Mr. W. C. Forster. He said: Mr. President and gentlemen, it has fallen to my lot to-night to have the honour, and at the same time the ordeal, to propose the first toast on the list, and that is the toast of "The Northern Institute of Chartered Accountants," coupled with the name of Mr. W. C. Forster, F.C.A., Vice-President of the Northern Chartered Accountants Students' Society. It is a double pleasure to propose this toast. Firstly, because it ought

to be a pleasure to any student to be allowed to propose the toast of the parent Institute; and, secondly, because the name with which the toast is connected is that of Mr. W. C. Forster. All students here to-night will be quite aware of the immense service Mr. Forster has rendered to the Students' Society since its inception. (Hear, hear.) His interest has been unflagging; in fact, he has been a friend in need on several occasions when a chairman was wanted for a meeting. He did not mind being called upon at the last minute, and I think that is one of the strongest proofs of friendship that you can have in a man—that he does not mind being used as a stop-gap, if I may use the word. The Northern Institute, of course, is responsible for our existence. We owe it to that Institute that we exist to-day. The Council of the Northern Institute have always been most good in acceding to our requests, and helping us; and I might take the opportunity to bring before you to-night the work which the Union of Chartered Accountant Student Societies throughout the Kingdom has been doing. As you know, the Union of Chartered Accountant Student Societies was formed some three years ago, and we have the honour to-night to have as a guest Mr. Herbert Lanham, who took part in that inauguration. (Hear, hear.) The Union was formed in order to bind the Student Societies together as a body, and to improve the educational facilities all over the country. The Northern Society has gained a great deal of help from this Union, both at the founding of the Society and during the last two years. It is a very valuable Institution, and I may say that we look to it in the future to provide us with a library which we have not been able to obtain from the Institute ourselves. The Council of the Northern Institute have been very kind in forwarding our request for a library to the Institute in London, and have helped us in several other ways, therefore we owe to the Northern Institute our grateful thanks and support. And in that respect might I ask the gentlemen who have been lucky enough and who may be lucky enough to pass over that line which divides the student and the qualified man not to forget that if they cannot remain members of the Students' Society to join the Northern Institute, because if the students of the future do not support the Northern Institute we cannot hope for a society like ours to grow. We must have more support, and we must have more support from our honorary members. In conclusion, gentlemen, I have much pleasure in proposing the toast of "The Northern Institute of Chartered Accountants," coupled with the name of Mr. W. C. Forster, F.C.A. (Applause.)

Mr. W. C. Forster, F.C.A., in responding, said: Mr. Chairman, Mr. Hugh Bowden, and gentlemen, I thank you very much for the very kindly way in which this toast has been proposed, and your hearty appreciation of it,

although I rather disclaim the parental connection Mr. Hugh Bowden saddled me with. The Council may be responsible for the students, but I do not know whether we can take all the credit for all their good doings; we take the responsibility if any misdeeds are going. I must endorse Mr. Hugh Bowden's request that the gentlemen who have passed the examination should think of the parent Society, and join it. We have done our best, as Mr. Hugh Bowden says, so far, and I only hope that his wish that the much longed for library will be forthcoming will be accomplished. Gentlemen, I thank you for this toast. (Applause.)

Mr. F. W. Dendy proposed the toast of "The Northern Chartered Accountants Students' Society," coupled with the name of Mr. Fred V. Spark, the Hon. Secretary. He said: Mr. Chairman and gentlemen, your kind invitation to-night has not only afforded me the pleasure of meeting you and partaking of a very excellent dinner, but you have also conferred upon me the honour—the real heart-felt honour—of proposing the toast of "The Northern Chartered Accountants Students' Society," whose annual dinner we are celebrating to-night. It is a fine thing to be a student. It is much better to sit at the bottom of the table and to be the youngest man there than to sit in the place of honour at the cross-table. But that privilege has also a responsibility. It is a pleasure to remember with Shakespeare that "things won are done, but joy's soul lies in the doing." It is a pleasure to remember what Bismarck said, that "amongst ladies the most attractive was the youngest lady." But that also has its responsibilities. I am glad to see that this Society is formed, then, to meet the needs of the students; and whilst the students of the Accountants' Society get very much good, I am sure, from rubbing their wits against each other, and discussing Balance Sheets and hearing lectures on such, to me, very abstruse subjects as Brewery Accounts, they will get still more benefit from just the simple act of associating one with the other. Each will get to know the other, and be able to know his man and trust his man, and that is the way in which business is done when you come into real life and cease to be students. Now, amongst the many political appointments that have been rained upon us within the last few days, the appointment which specially interests us are those of the Solicitor-General and the Attorney-General. If you will allow me to speak as a solicitor, I should like to say how interesting it is to know that they both passed a period of probation in a solicitor's office. Now, the accountant's is a very rapidly growing profession indeed, and I am not sure whether it would not be a good thing for some solicitors in the future—and I am sure it would have been for some solicitors in the past—if they had passed a period of probation in an accountant's office.

Well, may your period of probation be a happy one; may your Society flourish, and when you all look back to the time when you were students yourselves, may you take care to support the older body which has a claim upon you, and may we say of each of you, as I have no doubt that those who are near and dear to you will say:—

"Launched on that wide sea,  
Good luck be with you ever,  
And may good fortune be  
The mede of good endeavour."

I have to couple with this toast the name of Mr. Fred V. Spark, the Hon. Secretary of the Students' Society. (Applause.)

Mr. Fred V. Spark responded, and said: Mr. President, Mr. Dendy, and gentlemen: It gives me a certain amount of pleasure to reply to this toast. I think that the state of the Society at the present time is fairly favourable. Since the beginning of our second year, which commenced on the 1st April last, our membership has increased by a little more than twenty. The majority of these are ordinary members—that is, articled clerks—and I think that when we have an increase in articled clerks, for whom this Society is mainly intended, it shows that we are performing that which we set out to do. But an increase in the number of members is not everything, and in order that this Society may fulfil its highest ambition it seems to me that it lies with the students themselves to accomplish it—(hear, hear)—by attending the various lectures and debates provided by the Society, and by taking part therein; by speaking at the debates, or by asking questions after a lecture, or even by assuming some office, if necessary, in the Society. (Hear, hear.) Thus only can they do for the Society that which the Society wishes to do for itself. Already we have had a very interesting Presidential Address from Mr. J. H. Armstrong, besides many interesting lectures. The debates have been very good, and the general opinion seems to be that they are interesting. With regard to the programme for the early part of next year, some special lectures have been arranged, and the debate with the Law Students' Society has been fixed up. That seems to me to be a very good opportunity for any of the members of the Society who are willing to step forward and offer themselves up on the altar of self-sacrifice. Coaching classes your Committee have arranged, and all that is necessary is for the members of the Society to support these classes to their utmost so that they may be a success. The benefit to the members themselves who attend the classes is not the sole advantage which the Society gets, because the grant from the parent Society in London depends upon the number of students who attend and take advantage of all the educational facilities offered by this Society, either coaching classes or lectures. In conclusion, I must heartily thank Mr. Dendy for the kind and eloquent way in which he proposed the toast, and I

thank you, gentlemen, for the sincere way in which you received it. (Applause.)

Mr. F. R. Dixon, A.C.A., in proposing the toast of "Our Guests," said: Mr. Chairman and gentlemen, I have been asked to propose the toast of "Our Guests," and I rise to do so with much pleasure. I see that coupled with the toast are the names of Mr. Frank Marshall and Mr. Herbert Lanham, A.C.A. Mr. Marshall is here with several other comrades representing the legal profession. I think this is a very good opportunity for us to meet, as it furthers the good feeling which at present exists between the two professions. We are indebted to the legal profession for a great deal of the work we already have. Mr. Herbert Lanham is as well known to you as Dicksee on "Auditing" as the Secretary of the Union of Chartered Accountant Student Societies, which position he has only lately resigned. He did a great deal of work in that capacity, and the Working Union showed their appreciation of his work by presenting him with a memento in the form of a clock. We have not seen the clock up here, but we have had some part in getting that clock. We trust that Mr. Lanham will keep it—(laughter)—and thereby remember that we have some regard for the good services which he has rendered to us. I have much pleasure in asking you to drink to the health of our guests, coupled with the names of Mr. Frank Marshall and Mr. Herbert Lanham. (Applause.)

Mr. Frank Marshall, in responding, said: Mr. President, Mr. Dixon, and gentlemen, it gives me very great pleasure on behalf of the guests to respond to this toast, which has been so kindly proposed by Mr. Dixon and so cordially received by you. Mr. Dixon referred to the fact that I am here as a representative of the legal profession in this city, and I can assure you that I reciprocate on behalf of my profession the kindly feelings expressed by Mr. Dixon. One has heard of a certain amount of jealousy existing in certain parts of the country. I think nothing of that kind exists here. I know no place where the two professions work together with more understanding and good feeling, and I ask you to keep that good feeling going. I would like to express my sympathy with the Society, as I have taken a considerable interest in your Society and the Law Students' Society. Mr. Dendy had referred to the fact that it would be a good thing for some solicitors if they had studied bookkeeping and accountancy, and he (the speaker) had to inform them that bookkeeping was in the future to be one of the subjects in the Intermediate Law Examination, only there was not a book on which to examine them, but probably Mr. Lanham would oblige. He thanked them for the sincere way in which they had received this toast, and he assured them that the profession which he represented had the best feeling towards their Society. (Applause.)

Mr. Herbert Lanham, A.C.A., also responded, and said: I am very much obliged indeed to Mr. Dixon for the kind way in which he proposed the toast of "Our Guests," and the hearty way in which you have received it. I consider it a very great honour to be here this evening. I suppose that Mr. Hugh Bowden thought he ought to get me down here, and it gave me very great pleasure indeed to come down, the Northern Chartered Accountants Students' Society, being one of the youngest Societies, has first claim upon us. I only hope that in the future we shall find that the Union, of which I have been the Secretary for some time, until just lately, will do some substantial good for the Northern Society in the way of finding how it can improve the growing desire to create a library, and I shall bring the matter before the President especially. I would like to ask for the co-operation of the senior Societies of the whole Kingdom in the cause of the students of this country. It has been mentioned this evening by Mr. Hugh Bowden that the Institute of Chartered Accountants has accumulated very large funds. I cannot conceive of any better way of disposing of part of these funds than to assist the students who are going to be the members of the Council—the practitioners of the future. It will be the business of the Working Union of the Chartered Accountant Student Societies to further that endeavour by the best means in its power. I assure you, gentlemen, that we in London quite appreciate the fact that we have advantages which you do not all possess who live and work in the provinces. We have one of the finest libraries in the Kingdom, and I think Mr. Bowden, Senr., will tell you that the place at any time near the examinations is more or less flooded with students. Mr. Hugh Bowden mentioned to me at Liverpool that it may be necessary for him to leave the Students' Society, as he hopes—as we all hope—that he will soon become an A.C.A., and he will therefore have to leave the representation on the Working Union. I sincerely hope, gentlemen, that you will not remove one who is now so thoroughly in touch with the objects of the Union. It is very desirable that you have the same man in office to carry on the policy of the future. We have great difficulty in the continual change of secretaries, and as you have beyond doubt men who can help us in your provincial Societies it is very essential that we should have them working with us. I hope you will see to that if you can. Mr. Dendy said that it would have been well if certain solicitors whose names have been unpleasantly before the public had served a probation in an accountant's office, and Mr. Marshall has referred to the fact that it has been arranged to include a paper on bookkeeping in the 1906 Intermediate Examination of the Law Society, which law students will have to pass, and he referred to the difficulty of getting a book, and suggested that I might write one. I have just written

one, and I don't think I will be inclined, even if I had the time, to commence another. There is scope for someone to write a book for solicitors. It would be a great saving of time to solicitors and accountants alike if the members of the legal profession understood accounting better than they do at present. We have to do a great deal of law work for our examinations, but no sensible accountant would advise any clients on a point of law; he simply knows enough law to know when his client is running into danger. I am rather thankful that the "Mock Shareholders' Meeting" was successful. Mr. Dodd, the new Chairman of the Union of Chartered Accountant Students' Societies took a great deal of trouble over that, and I will have much pleasure in reporting to him the satisfactory way in which it has gone in Newcastle. I should like to take this public opportunity of thanking the Northern section of the Students' Societies for their share in contributing to the motor clock and barometer which was given me the other day. I did not like to ask for a motor, but that can follow if you wish. (Laughter.) At present I shall always keep that clock, although I believe one gentleman suggested instead of books I should have a clock, as it would be something to pawn if I was hard up. Gentlemen, I shall treasure that very much indeed as a memento of my connection with you. I thank you very much for the way in which you have received this toast.

Mr. G. Atkinson proposed the health of the Chairman, and said: Mr. Chairman and gentlemen, I have the honour to-night to propose the toast of "our worthy President, Mr. J. H. Armstrong." I need not remind the members of this Society how necessary it is for us to obtain the countenance, not only of a qualified member of the profession, but also of a gentleman who is as eminent in this city and in the accountancy world as Mr. Armstrong. We have been fortunate enough in the first and second years of the life of our Society to obtain eminent gentlemen as our Presidents, and this fact might perhaps incline us to forget that it is an extreme privilege to have gentlemen like these as our Presidents. I had the pleasure of being present and hearing Mr. Armstrong's most interesting and instructive address given before this Society at the beginning of this season. Mr. Armstrong touched on so many points that perhaps he had not time to dwell upon the social side of such a Society as ours. I may be excused if I say a few words on that point. In the first place, I think it is of the utmost value to a Society like this that we are able to meet together—to meet our contemporaries in the profession, and discuss points in accountancy with them. Of course, I know that lectures are very useful, but I must say that so far as my limited experience goes I think one learns more by discussing points in accountancy with your contemporaries. Then another advantage from the

social point of view is that we have the opportunity to meet, if not on quite equal terms, at least on fairly familiar terms with the qualified members of the profession, and I should like to point out that we shall be extremely glad if more qualified members of the profession were to appear at our debates. I have had the pleasure this week of being at Manchester and taking part in a debate there, and I must say I was greatly struck by the fact—the occasion was a mock shareholders' meeting—I was greatly struck by the fact that the entire board of the company in question was composed of qualified members of the profession. Some gentlemen may say it was a mistake, but we must weigh the advantages obtained from the support and active co-operation of qualified members of the profession. This, I think, will not be denied to be a great advantage, although the fact that your principal is present at a debate may incline you to be rather afraid to get up and speak. Gentlemen, I ask you to drink to the health of our worthy President, Mr. J. H. Armstrong.

The toast was drunk with musical honours.

Mr. J. H. Armstrong, in responding, said: I am much obliged to you, Mr. Atkinson, for the way in which you proposed my health, and to you, gentlemen, for the very boisterous manner in which you have received it. Before returning thanks for your kindness I am going to ask you to allow me as President of the Students' Society to say a few words on the education of accountants, because I cannot help feeling, now that I know that the Law Society is about to start accountancy as one of the subjects of its examinations, and that very few people know of the enormous advantages that follow from such an education, this education is not only an excellent one for the accountant himself, instructing him as it does in the various branches of his profession, and thereby securing him a living, but it carries with it certain additional advantages, not only to the accountant, but to everyone, whether he be a professional man or otherwise, and I do not think that the outside world sufficiently appreciates this fact. I am not referring at this moment to the brain-racking effect on the student of learning "double entry," or to the troubles and difficulties which he meets with when he first attempts to "find his balance"—"finding his balance" being the technical term employed by accountants for proving the double entry of the books. No, I am referring more especially to the higher questions of accountancy; but even, pausing for a moment, this portion of the student's education has a bearing on everyday life. How many of us present, when we have been attending college suppers or other orgies, have met with the troubles following "double," or even "treble entree" (the French word is perhaps more applicable under the circumstances), and have subsequently experienced the difficulty of "finding our balance." (Laughter.) But, as I said before, I am

referring to the more important questions, which must be familiar to all of you—such as "Goodwill," "Depreciation" and "Reserve," "Dead Plant," "Liquidation," and "General Winding-up."

Now, let us take the question of "Goodwill." The first difficulty that an accountant has to deal with when he comes across the abstruse and difficult question of "Goodwill" is to find out if the asset, whether it belongs to an individual or whether it belongs to a company, represents its proper value. I think that accountants will generally bear me out when I say that the value that is placed upon goodwill by individuals or by directors of a company is, as a rule, much in excess of the value that the accountant places upon it; and by this I mean the value which he places upon it as representing the public. Now, apply this to everyday life. Take the ordinary individual. Is it not a fact that in almost every case the estimate which he places upon his own goodwill—and by the term "goodwill" I do not mean the goodwill he bears to others or that others bear to him, though that he often overvalues too; I here mean the value which he places upon *himself* and his individual capabilities—is much in excess of what the world at large places upon it? And thus it is perhaps that those of you of the legal profession who so frequently come in contact with Chartered Accountants must have observed the modest demeanour which characterises the profession, because they can appreciate the true value to place upon their individual goodwills. Let us take another instance. Let us take that of "Depreciation and Reserve." One of the troubles that an accountant has to deal with when he comes in contact with directors who are about to declare dividends out of profits is that, in the accountant's opinion, they divide too much of the profits. They do not take into consideration the question of depreciation—the question of the possibilities of the future. And the accountant attempts to urge upon the board in discussing the accounts the necessity for precautionary measures as to future depreciation. It is not, he points out, the depreciation of to-day—it is the depreciation of the future which they cannot foresee. And what is the reply that he gets? The reply that he gets is (especially if it is a young company), "There is no depreciation; our plant is new and no depreciation has arisen, therefore what is the use of writing off depreciation if there is none to write off. Let us have the full benefit of our profits when we can, and as soon as we see depreciation has arisen then we will write it off." Now apply this to the individual. Take the young man who is bent upon getting as much out of life as he possibly can, or is what is generally termed "burning the candle at both ends." Does he take into consideration the question of depreciation or reserve? His friends will tell him, "You are going too fast; if you continue to go on as you are doing you will have no reserve left when

"you get older and when the natural depreciation of life sets in, and you should not therefore exhaust your energies now." And what is the reply of the young man? He says, "I am a young man; there is no depreciation in me. Why should I not enjoy life while I can, and if and when I see the effects of it, and that depreciation has set in, then I will create a reserve of energy with which to meet the future." What is the effect on both? Take the company that does not write off depreciation or reserve when it can. It waits until that time comes when it sees the necessity for such a course, but it probably finds that the profits are then not what they were, and are not sufficient to pay the dividend expected, and at the same time to create a reserve. And what happens? The company finally goes into liquidation! Take the individual's case. He waits too long and finds that after the energy necessary to keep him alive he has none to spare as a reserve for the future. And what happens? He, too, generally "goes into liquidation," in the ordinary everyday sense of the word—and then what happens? His plant becomes worn out; his corpus becomes dead; he is "wound up," usually in a winding sheet; he is placed in his coffin and scrapped on the scrap heap of the cemetery. Gentlemen, those companies that "create reserves" in their earlier days are the companies that are usually successful, and are the companies that live the longest. The young man that creates a reserve when he is young is the most successful in business and lives the longest. But the company has one great advantage over the individual; the company can replace its plant; the individual cannot. He may by artificial means replace his grinding plant, but the natural plant that he has to work with is that which was given him when he was born (and the time comes to all of us when that plant, in spite even of whatever "reserve" we may create, must wear out); and when that plant becomes dead the individual must present himself before the "Great Official Receiver" for his examination as to the manner in which he has conducted his business—his life—and upon whether he can answer the questions which are put to him satisfactorily depends upon whether he has it made hot for him hereafter or not. I might give you dozens of other applications of how the accountancy education is applicable to everyday life. I might caution young men as to the care which is necessary in amalgamating themselves with another company, especially if that company is a female one. I might speak to the married men, and point out to them the dangerous result of creating too large stocks, and the perils of "over-production"; or I might, again, point out to you all generally, especially those who have to do with Brewery Accounts (I am referring now particularly to Mr. Lanham), of the dangers of "large overdrafts," and how "too generous over-draughts" generally result in "liquidation." But I think I have said

enough to show you how the education of an accountant is applicable to almost every phase of everyday life. I am very pleased on looking around me to see amongst our guests so many of my legal friends present to-night, and to note that there are no serious signs of "depreciation" in any of them, which shows, no doubt, that their close connection with accountants and their methods have allowed them to see the wisdom of creating reserves. There is perhaps, looking at their heads, a certain "falling off in turn-over," but that is the wear and tear that need not affect their general working plant. I only trust that when we meet again (as I sincerely hope we may at some time in the future) we may not observe any more signs of depreciation in them than are to be expected by the general wear and tear of life. I have only therefore to thank you for the patient hearing you have given me on this dry subject, and also to thank you for the very kind way in which you have proposed my health this evening.

## Bookkeeping for Retail Grocers and other Tradesmen.

By M. WEBSTER JENKINSON.

A LECTURE read before members of the Sheffield and District Grocers and Provision Dealers Association on Tuesday, 5 December 1905.

There are certain essentials to success in every business.

Primarily there is needed an intimate knowledge of the trade and the conditions under which it is carried on, together with a certain amount of foresight as to the requirements of the public.

Sufficient capital is also indispensable, so that goods may be purchased in the best markets, and the trader not handicapped in his choice through being compelled to deal with certain large creditors, who otherwise would press for immediate payment; whilst among the other factors which contribute to the attainment of the object in view a foremost place must be accorded the system upon which the books are kept.

The law of many countries makes it imperative for traders to keep proper books of account, but the Legislature of this country practically leaves the matter to the discretion of those engaged in business, with a result that a large proportion of traders are never in a position to ascertain their financial position until too late, for, as the Inspector-General in Bankruptcy stated in a recent Report, nearly 70 per cent. of bankrupts who apply for their discharge have not kept any proper record of their business

dealings. Perhaps the desire to keep down expenses is the cause of this negligence in accounting, as traders do not care to incur any cost for which a direct advantage is not immediately apparent, but if the books be originally framed in a systematic and correct manner, the little extra labour involved will be more than repaid by the beneficial results obtained.

The system should be such that a complete and correct record may be obtained of every transaction, so that reference may easily be made on subsequent occasions; whilst it is essential that the trader may know not only the result of his trading for one particular period, but also *how* the profit made has been earned, or where the loss incurred has taken place. He must also be able to ascertain the true position of affairs, so that he may know the extent of his liabilities and the amount of capital at his command for enlarging the scope of his operations.

Of course, it is not possible to lay down any hard and fast rules, as the system adopted will vary according to the particular requirements of each case, but it must be as simple as possible, for books are to be framed for the business, and not businesses for a set of books.

Nevertheless, the value and importance of accurate bookkeeping cannot be overstated, as it is the only way whereby a proper check can be kept on employes, or mistakes in the conduct of the business localised and remedied for the future, and without a thorough knowledge of the details it is impossible to cut down expenses on anything like a systematic and proper basis.

Among the many benefits to be gained may be mentioned the following:—

- (1) The advantage of knowing the exact financial position from time to time, and the detection of leakages.
- (2) The possibility of preparing proper accounts for the Surveyor of Taxes, and thus avoiding an over assessment of income-tax.
- (3) The ability to present reliable accounts to an intending purchaser of the business, who naturally is willing to pay a better price if assured that the profit earned is actually as much as stated.
- (4) The prevention of errors, thus avoiding sales being made and not charged to the customer, or accounts being paid twice over.
- (5) The advantage to be derived from a complete record of transactions, thus facilitating references as to prices, &c.
- (6) The benefits of an analysis of expenditure that will indicate where economies can best be effected, and the advantages to be gained from the ability to compare the expenditure of one year with that of another.



In devising accounts for a grocer and provision dealer it is necessary to formulate two distinct systems, the one being especially suitable for the requirements of the trader who has only one shop and keeps his own books, and the other being adapted for larger concerns with branch establishments.

On the present occasion it is only intended to deal with the accounts of the former, and consequently the strictest economy of labour will be aimed at in the system to be described. Alternative modes of recording the transactions will be given, and the trader must himself select the method which he considers most convenient for his requirements, but this is merely a question of detail, and in no wise affects the ultimate results to be obtained.

#### *Sales.*

The orthodox method is to enter each sale in a Day Book and post the entry to the account of the customer in the Sales Ledger, the pages being added to ascertain the total sales for the week or month.

This system is, however, laborious if the transactions are numerous, and there are various ways in which a saving of clerical work can be effected.

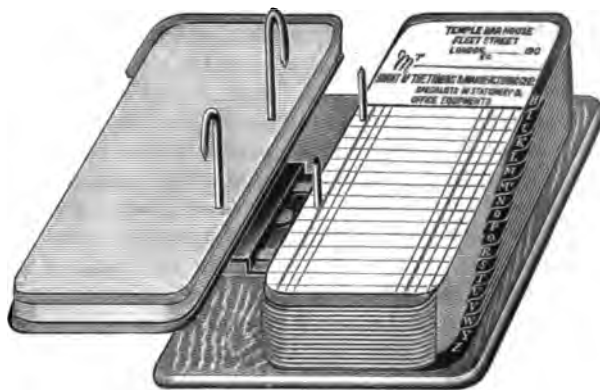
The *Duplicate Invoice System* is very suitable for a business doing a fair amount of credit trade.

A carbon duplicate is obtained of every invoice, thus obviating the necessity of copying the details into the Day Book, and the posting to the Ledger is made direct from the duplicates, which are numbered consecutively.

Each day the total of each invoice is entered in a Summary Book, which enables the total sales to be ascertained.

If any classification of the sales be desired the various items can be dissected by means of analytical columns in the Summary Book.

For small tradesmen, however, who only have a few credit sales, most of which will probably be paid at the end of the week, a simple and economical device, called the "Small Accounts Keeper," has recently been produced by the Trading and Manufacturing Co., Lim., Temple Bar House, Fleet Street, E.C., of which an illustration is here given.



It consists of a substantially made file, having a patent swing twin-arch clip, fixed on a wood back, with indexing divisional sheets for each letter.

At the beginning of the week, when, say, Smith obtains some goods, the particulars are entered on a bill the same size as the file, and preferably in duplicate, and the file opened at letter "S," and the bill put in.

When Smith orders further goods an additional entry is made on the bill without removing it from the file; and when he desires to pay, the account is ready, and can be removed and presented to him immediately, the duplicate remaining to afford particulars of the sale.

The totals are then entered in a Summary Book, as already described.

*Combined Day Book and Ledger.*—Another method by which the posting from the Day Book to the Ledger can be avoided is to enter all transactions direct into the Ledger, full details of the entries being there given.

This system is particularly convenient for a Pass Book trade, as the items can be copied into the Pass Book without the labour involved in turning up the items in a Day Book.

Form No. 1 is adapted for weekly customers, the accounts of, say, three persons being shown on one page, which is headed with the week, and space provided for the transactions of each day. The amount of each invoice is entered in the Amount column when the goods are sent out, full particulars being given, and any cash received is posted from the Cash Book in the Cash column.

## Form 1.

## COMBINED DAY BOOK AND LEDGER.

(One Page for each Week.)

THOMAS SMITH, 16 Victoria Avenue.						Mrs. SARAH JOHNSON, 10 Lemon Lane.						£c. &c.
Terms Weekly. Limit £3.												
Date	Particulars	Details	Amount	Fo.	Cash or Returns	Date	Particulars	Details	Amount	Fo.	Cash or Returns	
1905		£ s d	£ s d		£ s d				£ s d		£ s d	£c. &c.
Nov. 18	Balance Fo. 81 ..	..	0 16 4									
20	1 lb. Tea 1/10,	..										
	Cheese 6d.	0 2 4										
	Eggs 1/-, Bacon 1/6	0 2 6										
22	Cash ..	..	0 4 10									
23	Sultana Cakes ..	..	0 1 8		16 0 16 4							
25	Flour 6/6, Coffee 1/-	0 7 6										
	Pickles 1/-, Lard	..										
	6d.	0 1 6										
	Eggs 1/-, Biscuits	..										
	1/6 ..	0 2 6										
	Balance carried forward ..	..	1 14 4		0 16 4							
			..		0 18 0							
			£1 14 4		1 14 4							
	Total Sales for Week	Fo.	0 18 0									

At the end of the week each account is added and the balance transferred to another page, the total sales for the week being shown at the bottom of the page and entered in a Summary Book.

If the accounts are numerous, the labour involved in transferring the weekly balances makes the system too cumbrous, and in such cases Form 2 is more suitable, a separate page being used for each customer, and the

transfer to the Summary Book being only made monthly or quarterly.

Each transaction is entered in detail, the balance being extended so that the total amount owing by each customer may be seen at a glance from time to time.

The total of the Sales column shows the sales for the month or quarter, and this amount is transferred to the Summary Book, the balance owing being carried down to the next month or quarter.

## Form 2.

## COMBINED DAY BOOK AND LEDGER.

Terms Monthly. Limit £2.

THOMAS SMITH, 16 Victoria Avenue.

Date	Particulars	Details	Amount of Invoice	Fo.	Cash or Returns	Balance
1905		£ s d	£ s d		£ s d	£ s d
Nov. 1	Balance from Fo. 96 ..	..	..	..	..	0 16 4
2	Flour 4/6, Tea 3/8 ..	..	0 8 2			
	Bacon 2/-, Cheese 1/-	..	0 3 0			
	Eggs 6d., Butter 2/-, Lard 6d.	..	0 3 0			
6	Cash ..	..	0 14 2			1 10 6
	Tins Returned ..	..	..	21 R.B. 14	0 16 0	
7	Tea 1/10, Coffee 1/6, Cocoa 1/-	..	0 4 4		0 0 4	0 14 2
	Eggs ..	..	0 0 6			
9	Returned Cocoa ..	..	..	..	..	0 19 0
15	Tea ..	..	0 1 10	15 R.B. 14	0 1 0	0 18 0
30			0 1 10			0 19 10
			£1 0 10			
				Summary Book	£0 17	
Dec. 1	Balance brought down ..	..	..	..	..	0 19 10

SUMMARY for month ending 30 November 1905.

The total sales for the month would be posted to the credit of Sales Account in the General Ledger, as explained hereafter.

If the transactions are numerous, in order to facilitate the writing up, a Rough Cash Book or Till Book will be kept, in which all accounts received will be entered at the time, being copied into the General Cash Book at the end of the day.

## RECEIPTS.

### PETTY CASH BOOK.

## RECEIPTS.

### PAYMENTS.

The rulings can be altered according to requirements, but the following pattern will explain the method :—

## Form 6.

## CASH BOOK.

## RECEIPTS.

1 Date	2 Particulars	3 Folio	4 Customers' Accounts		5 Cash Sales	6 CASH	7 BANK
			Discount and Allowances	Cash			
1905			£ s d	£ s d	£ s d	£ s d	£ s d
Oct. 2	To Cash in hand and at Bank	20	✓	..	8 10 0	8 10 0	124 0 0
"	" Cash Sales	Lr. 41	0 1 3	2 10 0	..	..	..
"	" Jones, Account	" 51	0 6 0	6 1 0	..	..	..
"	" Smith, ..	"	..	..	19 10 0	28 1 0	..
"	" Cash Sales	"	..	..	..	..	36 11 0
"	" Do. to Bank	"	..	..	..	..	..
"	" Brown, Account	"	..	1 4 0	14 0 0	15 4 0	..
"	" Cash Sales	"	..	..	26 0 0	26 0 0	..
"	" Do. ..	"	..	..	..	..	41 4 0
"	" Cash to Bank	"	..	..	..	..	..
"	" Smith, Account	"	..	0 0 4	5 10 0	6 6 0	..
"	" Cash Sales	"	..	..	42 0 0	42 0 0	6 6 0
"	" Do. to Bank	"	..	..	..	20 0 0	..
"	" Do. Sales	"	..	..	..	..	..
"	" Bank—Cash	"	..	..	..	..	..
						£152 11 0	
1905							
Oct. 7	To Cash in hand	C.	..	..	..	49 3 0	

[Left-hand side of page.]

These columns would be added Monthly.

## PAYMENTS.

8 Date	9 Particulars	10 Voucher No.	ANALYSIS OF EXPENDITURE.												20 Other Accounts		
			11 CASH		12 BANK		13 Bought Book A/cs.		14 Cash Purchases	15 Trade Expenses	16 Wages	17 Horse-keep and Expenses	18 Rent, Rates, Insur'e, Gas and Water	19 Drawings			
			£ s d	£ s d	£ s d	£ s d	Fo.	Amount	£ s d	£ s d	£ s d	£ s d	£ s d	£ s d	Name of Account	Fo.	Amount
1905																	
Oct. 2	By Rice & Co.—Cheque	..	14 10 0	21	14 10 0	..	..	1 0 0	..	..	..	..	6 5 0	10 0 0	..	..	£ s d
"	" Eggs	..	1 0 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Bank	..	36 11 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" District and Poor Rate to 25th Mar.—Cheque	..	..	6 5 0	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Rent to 29th Sept. Do.	..	..	10 0 0	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Bank	..	41 4 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Grind & Mix, Lim.—Cheque	..	..	21 4 0	36	21 4 0	..	..	..	..	..	..	..	..	..	..	..
"	" Bank	..	6 6 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Yeast	..	0 10 0	..	..	..	..	0 10 0	..	..	..	..	..	..	..	..	..
"	" Cash from Bank	..	..	20 0 0	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Sundry Payments as per Book	..	1 16 0	..	..	..	..	0 16 0	..	..	1 0 0	..	..	..	..	..	..
"	" Wages	..	13 1 0	..	..	..	..	..	..	13 1 0	..	..	..	3 0 0	..	..	..
"	" Self	..	3 0 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
"	" Cash in hand—	..	£42 0 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
			7 3 0	..	..	..	..	..	..	..	..	..	..	..	..	..	..
			49 3 0														
			£152 11 0														

These Columns would be added Monthly.

[Right-hand side of page.]

The two *Cash* columns (Nos. 6 and 11) show the total cash received and paid away, and the *Bank* columns (7 and 12) record the payments into and out of bank.

The first entry will be the amount of cash actually in hand and at bank.

As the Sales Accounts are received from customers the amount is entered in the Cash column under "Customers' Accounts," the discount being shown in the column provided for the purpose. Any returns can also be put through the "Discounts" column, but, if numerous, it is better to use a separate Returns Book.

At the end of the day the Cash Sales will be entered (Column 5) and the *total amount taken* placed in the Cash column, together with any private receipts, which will be entered separately.

It is by far the best plan to pay the whole of the takings direct into the bank, Cash being credited and Bank debited with the sum paid in.

Payments out of cash will be entered in the Cash column, a record being kept in a memorandum book of petty disbursements—such as Carriage, Stamps, &c., the totals being passed through the Cash Book weekly.

Any cheques given in payment of accounts are placed direct to the credit of the bank, and cheques drawn for "Selves" will be credited to the Bank and debited to Cash.

At the end of the week the Cash columns are added, and the balance, which must agree with the amount actually in hand, carried down. It is usual to only balance the Bank columns monthly or half-yearly.

The payments, instead of being posted to Ledger Accounts, will be analysed under their respective headings, the posting to the Bought Book being made from Column 13.

These analytical columns will be added monthly and posted to the General Ledger, as explained hereafter.

If a large credit trade is done, the Duplicate Receipt Book can be made to serve the purpose of an Accounts Received Book. Each receipt will be numbered consecutively, and a carbon duplicate obtained, the postings to the Ledger being made from these duplicates, and the total amount only of each day's takings entered in the Cash Book.

The following form will explain the idea:—

#### Form 7. ORIGINAL RECEIPTS.

(10 on a page.)

No. 56				No. 51			
RECEIVED FROM				RECEIVED FROM Mr. Smith			
pound shillings				One pound six shillings and two pence.			
pence.				pence.			
Discount	Cash			Discount	Cash		
£ s d	£ s d			£ s d	£ s d		
				0	1	6	1
No. 57				No. 52			

#### DUPLICATE.

Discount	Cash	Discount	Cash
56	Lr.fo	51	Lr.fo 21st November
			Sm 120
			One six two
			0 1 6 1 6 2
57	Lr.fo	52	Lr.fo 22nd November
			Jon 161
			Two four eight
			0 2 2 2 4 8

All cash payments should, if possible, be made out of a round sum kept in hand, and not out of the till, all takings being paid direct into the bank, and accounts paid by cheque wherever practicable.

It is a very wise precaution to balance the cash daily, the amount being entered in a book kept for the purpose, so that, if the cash at the end of the week does not balance, the errors can be more easily traced.

#### Purchases.

Invoices for goods purchased should, when received, be checked off with the goods, prices compared, and initialled, any overcharges or trade discounts being deducted in red ink.

It is also very desirable that a Goods Inwards Book be used, and particulars of all goods received entered immediately upon receipt.

In a large business a Purchase Journal (Form 8) should be kept, in which will be entered not only the invoices for goods, but also those for expenses, an account being opened for each creditor in the Bought Ledger, to which the various amounts will be credited, the items being analysed in the Purchase Journal in the respective columns to which they belong.

### PURCHASE JOURNAL.

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Although a little more work, it is better to show the amount of each invoice, this being given in the Details column, and the total carried out into the Amount column.

When paid, the cash will be posted from the Cash Book (Form 6, Column 13), any discount or allowance being shown in the column provided.

At the end of the month the Amount column is added to ascertain the total goods purchased, whilst the amount owing is, of course, apparent from day to day.

If an analysis of the purchases be desired, columns similar to those in Form 8 can be added and the invoices dissected.

Returns should be entered in red ink in the Cash column, and deducted from the total purchases at the end of the month.

#### *Sacks.*

If sacks are charged and not allowed for until the Sack Tickets are presented, by means of the columns provided in the form given a continuous check can be kept.

The total amount of the invoice, including the charge for sacks, will be entered in the Amount column, and the number of sacks in the "Sacks now charged" column.

When returned, the number sent back should be entered in a Memorandum Book, a page being used for each miller, and the number of the Sack Ticket also given.

When allowed for, the total amount of the tickets and number of sacks should be crossed off in the Memorandum Book and entered in the Sacks Allowed column, being part of the credit that settles the corresponding invoices.

The balance should then be carried forward to the next invoice in the Sacks-Balance column.

This balance will consist of sacks in hand, sent to customers, or returned and not allowed for, and in this way it is possible to tell if any are missing, effectually preventing Sack Tickets being lost and never claimed.

If an ordinary Bought Ledger be used, the best manner to deal with sacks is to place the number charged in an inside column on the credit side of the Ledger Account, and the number returned in an inside column on the debit; then, when allowed for, mark off against the sacks returned the date when allowed by the miller.

By this method any sacks in the inner column not marked off have to be allowed at the next settlement, the difference between the two columns giving the number of sacks in hand.

For a small retail trader the only books required in addition to a General Ledger are, therefore—

- (1) Analysed Cash Book (Form 6),
- (2) Goods Bought Book (Form 10),

unless he sells on credit, when he must adopt some system to record his sales.

For a larger business the following books will be needed:—

- (1) Sales Day Book and Ledger (or some alternative method of recording sales. See pp. 6 to 12, and Forms 1, 2, and 3).
  - (2) Purchase Journal and Ledger, or combined book (Forms 8, 9, and 10).
  - (3) General Cash Book (Form 4).
  - (4) Petty Cash Book (Form 5).
- The trader who adopts one of these systems is then in a position to ascertain at any time—
- (1) Total Credit Sales, from Day Book or Summary.
  - (2) Total Cash Sales, from Cash Book.
  - (3) Total Allowances to Customers, from Returns Book or Cash Book.
  - (4) Total Goods Purchased, from Purchase Journal or Goods Bought Book.
  - (5) Total Allowances by Creditors from Cash Book or Goods Bought Book, if Form 10 be adopted.
  - (6) Total Expenses, sub-divided according to requirements from Analysed Cash Book, or, in case of larger trader, from Purchase Journal and Cash Book.
  - (7) Total Debts due by Customers, from Sales Ledger.
  - (8) Total Creditors, from Bought Ledger or Goods Bought Book.
  - (9) Total Drawings, from Cash Book.
  - (10) Cash at Bank or in hand, from Cash Book.

Stock should be taken every year, and in some cases it is desirable to keep a Stock Book, all goods bought being shown at both cost and selling prices.

Then if the Purchases, less Returns, calculated at selling prices, be added to the stock at the commencement, also taken at selling price, and the actual sales deducted, the balance should equal the stock on hand valued on the same basis.

As, however, goods are not sold at a uniform price, this method is by no means an infallible check, but after it has been in operation for some time an average rate of differences is obtained, and when this discrepancy is allowed for the results will prove better than theoretically would appear at first sight.

We will now assume that the trader obtains the necessary books, and desires to commence the new system on the 1st January.

The first step is to take stock, or estimate the value at the 31st December, after which he must prepare schedules of his assets and liabilities.

Lists will be made of—

- (1) Stock-in-trade as taken or estimated.
- (2) Fixtures and Fittings.
- (3) Horses, Carts, and Harness.
- (4) Sundry Debtors, showing any doubtful debts.
- (5) Balance at bank and Cash in hand.
- (6) Sundry Creditors.
- (7) Apportionments of payments in advance or provision for expenses accrued due.

Having obtained these particulars an opening Balance Sheet will be prepared in the General Ledger, the balance of which represents the capital of the trader at the 31st December.

This Balance Sheet may be assumed to be as follows:—

**Form 11.**

**BALANCE SHEET, 1st January 1905.**

General Ledger Fo. 75.

[illegible]

The General Ledger will be divided into two parts, separate books being often used, and the following accounts will be opened:—

Private Ledger portion—

- G.L. (1) Capital Account.  
(10) Drawings Account.  
(15) Fixtures and Fittings.  
(20) Horses, Carts, and Harness.  
(25) Stock-in-Trade.

**Nominal Ledger portion—**

- G.L. (100) Credit Sales.  
(110) Cash Sales.  
(120) Goods Purchased.  
(130) Salaries and Wages.  
(135) Carriage.  
(140) Horse Keep and Stable Expenses.  
(145) Rent, Rates, Insurance, Gas, and Water.  
(150) Trade Expenses.  
(155) Discounts and Allowances.  
(160) Bad Debts.  
(165) Bank Interest and Commission.  
(170) Income-tax.

Strictly speaking, a Journal should be used for the opening entries, but this may be dispensed with, and transfers made direct to the various accounts from the opening Balance Sheet. For example:—

### FIXTURES AND FITTINGS.

1905 Jan. 1	To value at this date as estimated, transferred from Open- ing Balance Sheet ..	Fo.	£	s	d	Fo.	£	s	d
		75	120	0	0				

Similar entries will be made in their respective accounts for Horses, Carts, and Harness, and Stock-in-Trade.

The amount of Sundry Debtors will equal the various balances in the Sales Ledger, and the same applies to the Sundry Creditors, which will be shown in detail in the Bought Ledger.

The Cash at bank and in hand are the opening entries in the Cash Book.

It will be observed that provision has been made for Rent, Gas, and Water accrued due, and these amounts must be credited to the Ledger Account, being a set-off against the amounts subsequently paid.

The Rates, Insurance, and Telephone Rent have, however, been paid in advance, and the proportion unexpired has to be debited, as the benefit will be received during the coming year.

The provision for Doubtful Debts is credited to Bad Debts Account, so that if these amounts are not recovered the loss can be charged against the sum provided.

Having completed these entries, the Capital Account will be credited with the surplus of assets over liabilities, as shown by the Balance Sheet.

The various accounts in the Nominal Ledger portion of the General Ledger are practically summaries of the different items of income and expenditure composing the Trading Account, to which the totals of the analytical columns are posted. The following table indicates the account to which the items will be posted.

Nature of Item	Book from which posting made	Debit or Credit	Account	When Posted
Credit Sales	Sales Day Book or Sales Book Summary	Credit	Credit Sales	Weekly
Cash Sales Allowances to Customers	Cash Book Cash Book	Credit Debit	Cash Sales Discounts and Allowances	Weekly Monthly

**Note:—**If a Return Book be used, the total returns would be posted to the debit of Sales Account.





## Form 14.

## TRADING ACCOUNT for the Year ending 31st December 1905.

General Led. Fo. 50.

1905 Jan. 1 Dec. 31		G. L.	£ s d	£ s d	1905 Dec. 31		G. L.	£ s d	£ s d
	To Stock at this date ..	25	310 6 8			By Sales—	100	799 16 6	
	• Goods Purchased ..	120	2,210 16 5			Credit .. ..	110	1,663 8 9	
						Cash .. ..			2,463 5 3
	Less Stock, 31st December 1905 ..	25	385 4 2						
	Cost of Goods Sold ..	✓	..	2,135 18 11					
	• Gross Profit carried down ..	C.	..	327 6 4					
				£2,463 5 3					£2,463 5 3
1905 Dec. 31	To Salaries and Wages ..	130	61 2 0		1905 Dec. 31	By Gross Profit brought down .. ..	C.	..	327 6 4
	• Carriage .. ..	135	6 1 7						
	• Horse Keep and Stable Expenses .. ..	140	26 0 5						
	• Rent, Rates, Insurance, Gas, and Water ..	145	67 1 4						
	• Trade Expenses ..	150	14 2 3						
	• Discounts and Allow- ances .. ..	155	5 6 8						
	• Bad Debts .. ..	160	1 0 6						
	• Bank Charges .. ..	165	0 17 6	181 12 3					
	Depreciation—	G. L.							
	Fixtures and Fittings ..	15	7 10 0						
	Horses, Carts, and Harness .. ..	20	5 0 0	12 10 0					
	Balance transferred to Profit & Loss Account ..	65	..	133 4 1					
				£327 6 4					£327 6 4

## PROFIT AND LOSS ACCOUNT.

1905 Dec. 31		G. L.	£ s d	£ s d	1905 Dec. 31		G. L.	£ s d	£ s d
	To Income Tax .. ..	170	..	3 10 0		By Balance from Trading Account .. ..	50	..	133 4 1
	• Transfer to Capital Ac- count, being Net Profit for the Year ..	1	..	134 4 3		• Bank Interest .. ..	165	..	4 10 2
				£137 14 3					£137 14 3

## Form 15.

## BALANCE SHEET, 31st December 1905.

Liabilities	£ s d	£ s d	Assets	£ s d	£ s d
Sundry Creditors as per list .. ..	..	140 6 5	Fixtures and Fittings .. ..	120 0 0	
Provision for Expenses accrued—			Less Depreciation written off ..	7 10 0	112 10 0
Rent .. ..	10 0 0		Horses, Carts, and Harness .. ..	40 0 0	
Gas .. ..	3 0 0		Less Depreciation written off ..	5 0 0	35 0 0
Water .. ..	0 7 0	13 7 0	Stock-in-Trade—		
Capital Account—			Goods .. ..	379 4 2	
As at 1st January 1905 .. ..	655 12 3		Paper & Stores .. ..	6 0 0	385 4 2
Add Profit for the year .. ..	134 4 3		Sundry Debtors .. ..	131 2 0	
	789 16 6		Less Provision for Doubtful Debts	4 0 0	127 2 0
Less Drawings .. ..	121 4 9	668 11 9	Payments in Advance—		
			Rates .. ..	2 15 0	
			Insurance .. ..	0 10 0	
			Telephone .. ..	1 6 8	4 11 8
			Cash—		
			At Bank .. ..	155 5 4	
			In Hand .. ..	2 12 0	157 17 4
		£822 5 2			£822 5 2

*Income-tax.*

The neglect to keep proper accounts is, generally speaking, the chief reason why so many traders are over assessed, for the Surveyors are always willing to treat the taxpayer in the fairest possible manner if returns are furnished that can be relied upon as correct.

The Government year for income-tax purposes ends on the 5th April, and the basis of assessment is the average profit of three years preceding that date, so that if the trader makes up his books to the 31st December the return for 1905-6 will be the average profit for the three years ending 31st December 1902, 1903, and 1904.

If the business has been commenced within the three years an average is taken from the date of commencing same.

It must always be remembered that certain deductions which are made before the profit earned by a business can be ascertained, are not allowed by the Commissioners.

This, at first sight, may seem strange, but it must be borne in mind that it is the income of the *individual*, and not of the *business*, that is really taxed, the income of the business being assessed in order that the principle of taxing income at its source may be carried out.

If the following list of deductions not allowed be examined the equity of this arrangement will be apparent, as to allow such deductions would be unfair to taxpayers whose incomes were derived from other sources.

The deductions not allowable are:—

- (1) Any loss not connected with or arising out of trade, such as losses made through speculations in shares or property.
- (2) Withdrawals of Capital or Investments.
- (3) Expenditure on improvements, or sums written off for depreciation, although an amount generally not exceeding 5 per cent., will as a rule be allowed for wear and tear of plant and machinery, whilst all repairs are chargeable.
- (4) Disbursements not connected with trade, such as voluntary subscriptions.
- (5) Interest on Capital, or annual interests or payments out of profits on which tax should be deducted on making the payment.
- (6) Partners' Salaries, as these are part of the income of the partners.
- (7) Reserves for Bad Debts, although debts actually bad or doubtful may be charged.
- (8) Losses recoverable under a contract of insurance.
- (9) Household Expenses.
- (10) Income-tax.
- (11) Losses by fire, excepting damage to stock.
- (12) Preliminary Expenses incurred in the flotation of a company.

If the taxpayer resides on his business premises he can

only charge two-thirds of the net annual value as rent, and the rates, gas, and water must also be apportioned.

If, however, he is occupier of his own premises, he is entitled to charge the net assessment under Schedule A, or two-thirds of such amount if he resides on the premises.

In the case of a firm it is often desirable for the partners to be separately assessed, so that they may obtain the benefits of the abatements on incomes under £700, whilst claim can also be made for life insurance premiums payable to a British office not exceeding one-sixth of the total assessable income, although this latter does not reduce the income for the purpose of obtaining abatement.

The exemptions and abatements made are as follow:—

INCOME	ABATEMENT
If the Income from <i>all</i> sources does not exceed £160 per annum	{ No Tax payable.
Exceeding £160 and under £400 ..	£160.
"      400      "      500 ..	150.
"      500      "      600 ..	120.
"      600      "      700 ..	70.
Over £700 .. .. .	No Abatement.

The income from *all* sources, whether taxed or not, must be stated in the form to be filled up claiming abatement, and the income of the wife must be included, unless she carries on a business separate from her husband and the total joint earnings do not exceed £500, in which case they may claim to be separately assessed.

If the taxpayer does not make a return, or if the Commissioners are dissatisfied with the amount of his return, the Commissioners will themselves assess him at the amount they consider reasonable.

In that case the taxpayer, as soon as he receives notice of the assessment, should, if he so wishes, appeal at once, by giving notice of his intention to the Surveyor of Taxes within *ten* days, and must then appear before the Commissioners at the time and place fixed for the hearing of the appeal, and produce a detailed statement of accounts to substantiate his claim.

Usually if the taxpayer calls upon the Surveyor and submits accounts the assessment will be reduced to the correct amount, and attendance before the Commissioners excused.

If, however, notice of appeal be not given within the requisite time, or if at the end of the year the trader finds his profits have fallen short, he may claim repayment of the tax overpaid. Claims for repayment under Schedule D must be made within, or at the end of, the year of assessment, although claims for repayment where tax has been paid by deduction, and the taxpayer is entitled to exemption or abatement, or for life insurance premiums, may be made within three years after the end of the year in respect of which the tax was paid. In the case of claims under

Section 133 of the 1842 Act, repayment will only be made if the profits of the year of assessment are less than the profits for one year on a three years' average, *including the year of assessment*.

Strictly speaking, if the new average is less than the actual profits earned, no claim can be made, but in practice the authorities make a concession, and allow the assessment to be reduced either to the actual profit or the new average, whichever is the greater.

Further relief is also granted under Section 23 of the Customs and Inland Revenue Act, 1890, for the taxpayer can, by giving notice of appeal within six months after the year of assessment, set off any loss under one schedule, or in one business, against a profit under another schedule or in another business, and can claim repayment where necessary to the extent of the loss, provided such claim does not exceed the tax paid.

Income-tax is generally unpopular, but the taxpayer is the one who is most to blame. The Surveyor is usually regarded as an enemy instead of a friend; and if the persons called upon to bear their burden of State expenditure would only take him into their confidence, and supply him with the accounts he requires, they would find him only too willing to settle the assessment at the correct figure.

The taxpayer who has not submitted accounts has no real cause to grumble if the Commissioners will not accept his return, for the provisions of the income-tax laws are so complicated that a great number of persons who honestly believe they have made correct returns have failed to do so from wrong ideas of what deductions can legally be made from the gross income.

And, on the other hand, many traders to-day are paying far more than their fair share of the tax, merely through neglect to keep proper books.

May such as are numbered among the latter be now reminded of the old adage, "It's never too late to mend."

#### *Conclusion.*

In these days of keen competition no trader can afford *not* to keep proper books.

If, as he hopes, his business is to increase, he must know his financial position before he can launch out in a larger way.

Unless he can prepare a Trading Account he is also unable to tell whether he is making the gross profit which he thinks he ought to earn; whilst without a systematic record of expenses it is often difficult to know where to effect economies.

The method described is only intended for a small or moderately sized shop. The larger trader must have further details; he must departmentalise, so that he can locate weak spots; he must prepare statistical records, so that he can compare the percentages of one period with

another; he must be able by means of his system of book-keeping to check the various employees who are not always under his personal supervision.

To such as these the paper will prove of but little interest; but those who have not yet attempted to keep proper books may, perhaps, from these notes obtain some information that will help them to mend their ways.

The primitive man recorded his transactions by notches on a stick; the traders of Babylon, 2,600 B.C., kept their accounts on clay slabs, writing the same with a stylus; in latter days a Scotchman has been known to drop pebbles into various bottles, each receptacle representing a customer and each pebble a shilling.

The trader of the twentieth century can adopt more efficient methods than these, and although a properly ruled set of books may entail a little extra cost at the outset, yet this should not deter any business man from spending a few shillings on books that may save him pounds.

There is no need to purchase the ponderous volumes with fantastic decorative lacings on their costly vellum covers that delighted the hearts of the bookkeepers of bygone days; what is required are books to suit the business.

The trader who has to post up his transactions after he has closed his shop for the day has not time for elaborate methods of accounting; he must be able to obtain the best possible results with the minimum of labour.

I know it is easy to say how books *should* be kept; I know it is not always so easy to find time to keep them. I have not forgotten that

"The toad beneath the harrow knows  
Exactly where each tooth-point goes.  
The butterfly upon the road  
Preaches contentment to the toad."

## **Manchester Chartered Accountants Students' Society.**

### **Mock Shareholders' Meeting.**

At the meeting of this Society on Monday, the 11th December 1905, Mr. Frank Halsall, A.C.A. (in the unavoidable absence of the President in the chair), announced that the proceedings would take the form of a mock shareholders' meeting, and called upon Mr. H. S. Fergusson, A.C.A., as chairman of the company (The Empire Sugar Estates (1900), Lim.), to preside over the shareholders assembled, being members of the Manchester Students' Society, with three representatives from the Newcastle Society.

Mr. Fergusson first called upon the Secretary, personated by Mr. H. Julius Lunt, to read the notice

convening the meeting, after which he addressed the company on the difficulties overcome during the year, but expressed the hope that the business of the meeting would be speedily transacted as a sign of confidence in the board.

The auditor (Mr. R. N. Carter, F.C.A.), in his report, drew attention to certain features of the Balance Sheet, amongst which were the following:—

- (1) That the uncalled capital was treated as an asset, the total capital issued being stated as a liability, instead of the net amount of capital paid-up only being regarded as a liability.
- (2) That the principal assets of the company, comprising Freehold and Leasehold Land, Buildings, Machinery, Factories, and Goodwill, were stated at a lump sum of £260,000, which the directors said they were unable to sub-divide, and hence the auditor could not express any opinion as to the adequacy of the amounts set aside for lease renewal, obsolescence, or general deterioration in value.
- (3) That a dividend could not properly be declared until a loss incurred in trading in the year 1903 had been extinguished.
- (4) That £3,750 discount on debentures had been treated as part of the General Contingencies Fund.
- (5) That the greater part of the Cash in hand consisted of post-dated cheques, promissory notes, and notes of hand.

Discussion chiefly centred round the second of the above items, indignant shareholders demanding more information, on the grounds that they were entitled to know what had been paid for goodwill, whether the assets were really worth the sum stated, and whether sufficient depreciation had been written off. General dissatisfaction was expressed with the accounts submitted, and in the course of the debate, to which Messrs. John Hamer, A.C.A. (the managing director), Joseph Bell, A.C.A. (the solicitor), Brewis, Brown, Dryden, Phillips, Plant, Porter, and Rowntree, of Manchester, and Messrs. Atkinson, Sinclair, and Spark, of Newcastle, contributed, many points in the accounts requiring explanation were brought to light. Finally it was resolved—

“That the report and accounts be referred back, and that a Committee of Inspection be appointed to investigate the position of affairs and report to a future meeting.”

On this motion being carried, the Chairman announced his determination not to offer himself for re-election to the board.

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HARMSWORTH ENCYCLOPÆDIA. — Parts 21 and 22, just issued, are the first two numbers of Volume 5. Each number consists of 160 pages, profusely illustrated and well maintains the excellent standard of the preceding parts.

## Reviews.

### The Chartered Institute of Secretaries' Year Book, 1905-6.

Price 2s.

The Year-Book of the Chartered Institute of Secretaries, which held its 14th annual general meeting on the 16th October last, has now been issued, and includes Royal Charter, Bye-laws, and Rules for Examinations, as well as alphabetical and topographical lists of members. The total membership is now 3,347, of whom 1,545, or nearly one-half, are in London, Manchester coming second with 104 members, and Birmingham third with 72.

### Willing's Press Guide for 1906.

James Willing, Junr., Lim., 125 Strand, W.C. Price 1s.

The 33rd annual issue of this well-known handbook is upon the lines which have characterised previous editions, and earned for the annual the reputation which it now enjoys. It contains a remarkable amount of reliable information, which will prove valuable to all classes of advertisers.

### Mathiesons' Handbook for Investors for 1906.

Effingham Wilson, 54 Threadneedle Street, E.C.

Price 2s. 6d. net.

This well-known handbook provides, in a convenient pocket form, a record of Stock Exchange prices and dividends for the past ten years in all the more important securities dealt with on 'Change. The particulars have been brought down to November 1905, and are therefore as up-to-date as it is possible for any publication of this description to be.

### The Unispect System of Bookkeeping.

By ALEX. T. HUNTER, C.A.

Edinburgh, 1905: Gordon Wilson, 47-49 Thistle Street.

Price 6d.

This little pamphlet—for we can hardly call it a book—aims at describing a system of accounting suitable for the smaller class of retail traders. The desirability of avoiding the undue multiplication of separate books of account is duly appreciated, but in the effort to reduce the number to a minimum those retained have been elaborated to an extent that makes it out of the question to expect that any average retail tradesman would be able, still less willing, to keep them upon the lines suggested. While duly appreciating

the difficulties of the problem that Mr. Hunter has set himself, we cannot say that we think these difficulties have been very successfully surmounted.

### Personal.

MR. PHILIP H. DARBYSHIRE, Chartered Accountant, announces that he has commenced to practise at 17 Albert Road, Middlesbrough.

MESSRS. JOHN FREDERIC TITCHMARSH and ISAAC L. ENSOR, Chartered Accountants, announce that the partnership hitherto existing between them has been dissolved by effluxion of time. Mr. TITCHMARSH will continue to practise at 17 Museum Street, and Mr. ENSOR will practise at 30 Museum Street, Ipswich.

MR. RICHARD H. GRANT, A.C.A., and Mr. ALAN E. WIGFIELD, A.C.A., announce that they have entered into partnership, and are now carrying on business as Chartered Accountants at Consett Chambers, Pilgrim Street, Newcastle-upon-Tyne, under the style of GRANT & WIGFIELD.

MESSRS. NORMAN HURTLEY, A.C.A., and CHARLES E. CLARK, A.C.A., announce that they have commenced to practise at 24 Bond Street, Leeds, under the style of HURTLEY & CLARK.

### Old Housekeeping Accounts at Belvoir.

RECORDS of monetary disbursements are generally regarded as a subject of too serious a nature to jest upon. Nor does a household account book often afford much amusement to the reader. One might, indeed, wonder why not, for it must be generally as sincere a record of personal tastes and character as the diary of Pepys or the autobiography of Franklin; and when it has been kept by hands which have been stilled in death for centuries, it becomes in its way a national rather than a personal record. These facts are strikingly illustrated in a series of household accounts preserved at Belvoir Castle by the Duke of Rutland, and now published by the Historical Manuscripts Commission. The accounts extend from the first quarter of the sixteenth to the last year of the seventeenth century, and throw a flood of light on the expenses of a great house under the Tudors, the Stuarts, and William III. Business and pleasure are curiously mingled in the records, payments in connection with bull baiting, dog-fighting, purchases of tobacco and pipes, and food and drink, and the settlement of doctors' bills and travelling expenses being all duly recorded.

In 1541 one finds entries indicating that high festival was being kept at Belvoir, thus:—

"Item, the xxij dey of Janyver, to Mr. Tomsyn servaunte whiche brought his buulles and horse to Belvoir and was there beyted, iij s. iiij d."

"Item, the xxiiijti. dey of Janyver, to the keper servaunte that kepes ij of the Quene's Graces beres whiche was bayted at the Castell of Belvoir xxd."

The sixth Earl of Rutland was a believer in the efficacy of precious stones as a protection against poison, and in December 1598 pays "vj. li" for two stones accordingly. The seventh Earl, in 1641, however, is more discreet in the matter, as is revealed when he is buying two stones to cure an internal complaint. For these "I have payd 3 li 5 s. and am to have a twelv moneths' tryall, and yf I do not like them, I shall have 40s. for them againe." Night caps appear to have been a somewhat expensive luxury, for in November 1596 there is paid for "ij night cappes wrought with gold xliiij s." Smoking was evidently much indulged in in the Earl's retinue. In 1600 "two pound of tobacco" cost "xxxij s., and tobacco pipes xvliij d." In 1669 the possession of an elaborate tobacco box seems to have been a matter in which one would try to go one better than one's neighbour, for there appears this entry in the accounts for that year:—

"Paid Mr. Fickett's bill for new making his Lordship's tobacco box, adding in weight and goodness of gold 4 oz. sterling, the box waighes now  $\frac{3}{4}$  of an oz. troy, and 1d. wt. more than Lord Exeter's box, 6 li 5 s."

Probably tobacco taken from a plebeian pouch would taste just as fragrant as that kept in this glorified "bacca box."

### Life among Lepers.

MR. W. H. P. ANDERSON, the Canadian Accountant (whose lecture on "Manufacturing Costs" appeared in our issue of November 4 1905), who gave up a prosperous career to devote his life to work among lepers in India, writes to Mr. John Jackson, of the Leper Mission, Exeter Hall, W.C.:—

"I arrived in Chandkuri on Sunday morning, November 26. Just as we entered the village we were met by the Leper Asylum band. These poor fellows, with their simple means of making music, were a pathetic sight. Over the road the word "Welcome" appeared in the form of an arch. The bungalow had been decorated, and the untainted children of the lepers, to the number of about 100, had assembled, all neatly dressed, the girls especially looking quite picturesque. The tainted children from the asylum were also there. The boys and girls sang hymns in Hindi, and many salaams were given to the new sahib."

## Meeting for the ensuing Week.

Thursday — INSTITUTE OF CHARTERED ACCOUNTANTS. —  
Investigation Committee, at 3 p.m.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Jan. 12th, was 145, viz.:— New Bankruptcy Proceedings published in the *London Gazette*, 93; Deeds of Arrangement registered, 52. The respective numbers in the corresponding week of last year were: Bankruptcies, 82; Deeds of Arrangement, 76—total, 158; being a decrease of 13. The total number of commercial failures recorded during the 2 weeks of the present year is 273; the total number recorded in the corresponding 2 weeks of last year was 323, showing a decrease of 50.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Jan. 12th, was 148. The number in the corresponding week of last year was 172, showing a decrease of 24. The total number filed during the 2 weeks of the present year is 250; the total number filed in the corresponding 2 weeks of last year was 291, showing a decrease of 41.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Jan. 12th, amounted to £2,450,120, by way of addition to £2,070,993, previously issued by the same companies. The amount registered in the corresponding week of last year was £611,122, showing an increase of £1,838,998. The total amount registered during the 2 weeks of the present year was £3,465,512 (in addition to the issues in previous years by the same companies), as compared with £3,590,209 for the corresponding 2 weeks in 1905, showing a decrease of £124,697.

## The Profession in Scotland.

### Personal.

Mr. James B. Sutherland, C.A., and Mr. Francis A. Downes, C.A., intimate that they have begun the practice of their profession at 156 St. Vincent Street, Glasgow, under the firm-name of Sutherland & Downes.

### The Edinburgh Society of Accountants.

A librarian has been attached to the rooms of the Edinburgh Society of Accountants, at 27 Queen Street, Edinburgh.

The following evening classes for apprentices are being conducted at 27 Queen Street, and will meet weekly until

the end of March:—Arithmetic and Algebra, conducted by Mr. Vyvyan Marr, F.F.A., F.I.A., on Thursday evenings at 8. This class is intended for apprentices in their first or second year.

Actuarial Science, conducted by Mr. Vyvyan Marr, F.F.A., F.I.A., on Tuesday evenings, at 8.

Law of Scotland (covering Bankruptcy, Arbitrations, Insurance, and Fee and Liferent), conducted by Mr. W. Kinniburgh Morton, B.L., S.S.C., on Wednesday evenings at 8.

Political Economy, conducted by Mr. Archibald B. Clark, M.A., on Monday evenings, at 8.

The last three classes are intended for apprentices who have passed the Intermediate Examination.

## COURT OF SESSION.

### Edinburgh—First Division.

(Before the LORD-PRESIDENT and Lords McLAREN, KINNEAR, and PEARSON.)

January 9.

R.N.—Wm. H. Murray and others (Sir George Warrender's Trustees) v. Lord Advocate.

*Estate Duty—Deduction in respect of Sum contained in Bond and Disposition opposed by Crown in respect that there had been no consideration in Money or Money's worth.*

In this action a claim was made by the Crown in respect of property passing on the death of the late Sir George Warrender of Lochend, Bart. Sir George died on 13th June 1901. As shown by inventory given up in August 1901 by the defenders, his trustees, the aggregate net value of his estate, heritable and moveable, was £1,071,387, implying payment of estate duty at the rate of 8 per cent. Payment was then made of the estate duty leviable in respect of the moveable property, leaving the duty on the heritable estate to be separately accounted for. On 13th June 1902 the defenders paid a sum of £18,341 to account of the estate duties leviable in respect of the heritable estate leaving accounts adjusting the amount of the duties to be subsequently lodged. In the accounts which were so lodged the defenders, in bringing out the net principal value of the heritage liable to duty, claimed the right to deduct the sum of £30,000 contained in a bond and disposition in security granted by Sir George over his estates of Brownisfield and others in favour of the trustees under the marriage contract of his son, the present baronet. The question in the case was whether the deduction made by the defenders in account of the sum of £30,000 was permissible under the Finance Act of 1894. The Crown objected to the deduction, on the ground that the bond for £30,000 was not in fact the debt incurred by Sir George or an incumbrance created by him *bond fide* for full consideration in money or money's worth wholly for his own use and benefit. The defenders, on the other hand, main-

tained that for the £30,000 Sir George received full consideration in money's worth in respect of his son's discharge of the right of legitim. It was said that on Sir George's death his son's claim in name of legitim would have amounted to over £250,000. In the Outer House Lord Pearson decided in favour of the Crown, holding that no deduction could be allowed in respect of the £30,000, as the burden had not been created for full consideration in money's worth and wholly for Sir George's own use and benefit. The defenders were found liable in expenses. The defenders reclaimed.

The Court, without calling on counsel for the Crown, adhered to the judgment of the Lord Ordinary, and found the Crown entitled to expenses.

(Before the LORD-PRESIDENT and Lords McLAREN and PEARSON.)

January 10.

**R.N.—Robert Lang v. John Muir.**

*Arrestment—Seller entitled to Cancel Sale by Buyer's Misrepresentation and Concealment—Creditors' Arrestment Invalid.*

In this action John Muir, farmer, Haggs, Kirknewton, sued Alexander Rankin, Kirkintilloch; Robert Lang, grain merchant, Larbert; and the Caledonian Railway Company for a decree that a purchase of oats made by Rankin from the pursuer in April 1904 was not valid, and that the arrestment thereof by the defender Lang in the hands of the railway company was of no legal force. Lang only defended the action. After a proof the Lord Ordinary gave judgment holding that the pursuer was entitled in the circumstances proved to cancel the sale, and that the arrestment of the defender Lang was of no avail. The oats were never paid for. When Rankin purchased the oats they were dispatched to him, in accordance with his request, by rail to the station of the Caledonian Railway at Buchanan Street, Glasgow. There they were arrested by the defender Lang, a creditor of Rankin. At the time of the purchase Rankin represented himself to be a man of means, doing a large business, but he concealed the fact that in March 1903 he had granted a trust deed for behoof of his creditors, his estate yielding only 1s. 4d. in the £. The proof disclosed, in the opinion of the Lord Ordinary, such misrepresentation and concealment on the part of Rankin as amounted to fraud, giving cause to the contract and without which the pursuer would not have contracted. The pursuer was therefore entitled to rescind the sale in a question with Lang, the arrester, who was in no higher or better position than Rankin himself. The pursuer was found entitled to expenses. Against this judgment the defender Lang reclaimed.

The Court, without calling on counsel for the respondent, adhered to the judgment of the Lord Ordinary, on the same grounds, and found the reclaimer liable in expenses.

**Edinburgh—Second Division.**

(Before the Lord JUSTICE-CLERK and Lords KYLLACHY, STORMONTH-DARLING, and LOW.)

January 12.

**Case for James Walker on Appeal under Taxes Management Act.**

*A Peculiar Income-Tax Question.*

The question in this case was whether the appellant, James Walker, of R. & J. Dick, 3 M'Phail Street, Glasgow, was bound to pay income-tax on profits put to his credit in the firm's books for the purpose of paying out the capital of the late James Dick, a member of the firm. The Commissioners of Inland Revenue decided that he was, and so assessed him.

The Court reversed the determination of the Commissioners, on grounds explained by Lord Stormonth-Darling, who gave the opinion of the Court, and found the appellant entitled to expenses.

Lord Stormonth-Darling said that case arose on a claim by the appellant for abatement of income-tax which the Commissioners had refused to allow. The claim was made on the ground that the appellant's total income from all sources for the year of assessment, though exceeding £150, did not exceed £600, and he was therefore entitled to relief equal to the income-tax upon £120. His precise income he stated at £561, made up of £316 of salary (the immediate subject of assessment) and £245 which had already borne tax. It was conceded by the Crown that that sum of £561 was all the income of which he had the actual enjoyment, but they contended that his income from all sources amounted to £2,000 a year, if account were taken, not only of 10 per cent. of the profits of the business of R. & J. Dick paid to him in cash, but of the balance of those profits credited to his account in the books of R. & J. Dick in accordance with a certain deed of arrangement granted by the late Mr. James Dick on 4th March 1902. The question for decision was whether that balance of profits was part of the appellant's income for the year of assessment, and that depended on the just construction of the deed of arrangement. The late Mr. Dick, who was the grantor of it, was the sole proprietor of a large and lucrative business in Glasgow as a boot, shoe, and belt manufacturer, and he seemed to have conceived the idea that the best means of achieving the double purpose of getting payment of his large capital out of the business after his death, and at the same time benefiting the heads of the various departments of his business, was to give them a prospective interest in the profits, and power ultimately to acquire the business itself. Accordingly by the first article of the deed he named fifteen employees (of whom the appellant was one), and he allocated to each of them a number of shares, varying in number from ten to two, and making in all one hundred shares, with a declaration that the provisions of the deed in their favour should not become vested interests until the whole of his capital and interest had been paid out, and that it should not be



competent for them on any ground whatever to dispose of their interest in the profits or in the business itself. Ten per cent. of the profits of the business were to be paid over to these employees in cash, and the remaining profits were to be credited to their respective accounts in the books of R. & J. Dick, until the whole of Mr. Dick's capital and interest was paid out. As if to emphasise that the interest of the employees in their profits was to be contingent on Mr. Dick's own capital being paid out, there was a declaration that the "said remaining profits allotted to the employees as aforesaid shall be accumulated without adding interest, and form a fund available for the "paying out of my capital from the business." Although the employees were to carry on the business Mr. Dick's trustees were placed in a position of absolute control, until the whole of Mr. Dick's capital and interest had been fully paid to them. At the date of Mr. Dick's death, on 7th March 1902, his capital in the business amounted to £351,550. At the same time the firm of R. & J. Dick had an overdraft of £143,177 from the bank. It was arranged between the trustees and the employees that the overdraft should be liquidated by the employees before they began to pay out Mr. Dick's capital, and by 31st December 1903, so prosperous had the business been that the overdraft had been reduced by £93,209; accordingly at 31st December 1903 the debt to the bank stood at £49,968; the debt to Mr. Dick's trustees stood at its original figure of £351,550; and the accumulated 90 per cent. of the profits of the business credited to the employees in the books of the firm amounted to £72,076 17s. 1d. The assessable profits of the business for the year ending 5th April 1905 were £43,441, for which an assessment had been made on R. & J. Dick, and paid. What was the effect of the deed of arrangement on the legal position of these employees until the time arrived for Mr. Dick's trustees making a conveyance of the business in their favour? Were they still only employees with a right to salary and immediate payment of a small percentage on profits, together with a prospective and contingent interest in the business itself? Or were they a purchasing partnership, with immediate entry to the business, but with a postponement of the obligation to pay the price, and only such limitations on their right of property as were necessary to give the seller security for the price? His Lordship had no hesitation in adopting the first of these alternatives and rejecting the second. The entire deed seemed to him redolent of the grantor's desire to keep the business under the control of his trustees until the whole of his capital and interest had been paid out. Till then the employees were not to touch a shilling of the profits except the small percentage, which was much more appropriate to active management by a servant than to the position of a principal. In short the business was to be in law and in fact the property of the trustees until the conditions were fulfilled for their conveying it to the employees. If so, it was impossible to predicate of the appellant that his share of the 90 per cent. of profits was a part of his income for the year of assessment. It was no

doubt carried to his credit as a book entry, but it was primarily to form a fund available for the paying out of Mr. Dick's capital, and it might never be the property of the appellant at all. The King had had his tax upon it in the hands of R. & J. Dick, and when the Crown demanded that the appellant's presumptive share of their profits should be reckoned as part of his individual income, the Crown must show that the share was not presumptively or contingently, but actually and indefeasibly his. In that the Crown had failed.

The other Judges concurred.

### Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	..	4%

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS

AND

ACCOUNTANCY THROUGHOUT THE WORLD.

VOL. XXXIV.—NEW SERIES.—No. 1625.] SATURDAY, JANUARY 27, 1906. [PRICE 6d.

Extract from *Auditing*, by LAWRENCE R. DICKER, F.C.A.  
(Page 190)

*Licensed Houses* present some rather special features. The goodwill attaching to the license gives the lease or freehold of licensed premises a market value greatly in excess of their real value as buildings. To be properly considered, the value of the premises and the license must be separated. The former should be depreciated in the usual way, leaving the license alone to be considered. A license on freehold premises does not depreciate, but a license on leasehold premises passes away with the premises and must therefore be depreciated like a lease. A license may at any time be lost—either for misconduct or for no reason—but this is a contingency outside the scope of depreciation. It may, however, be provided against by Insurance, which would appear to be a most prudent course to adopt.

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**APPOINTMENT OF AUDITOR.**

THE Corporation invite applications from Members of the Institute of Chartered Accountants, or of the Incorporated Society of Accountants, to audit the accounts of the Corporation in such manner as the Corporation direct in addition to the Auditors appointed under the Municipal Corporations Acts.

The duties will be left to the discretion of the person appointed, but he will be required to report half-yearly on the audit of each half-year's accounts, and to report, as and when occasion shall require, on any matters which shall have come under his notice which he considers require mentioning in the interests of the Borough, or which may be referred to him by the Council.

The salary offered is fifty guineas per annum, and the appointment will be made in the first instance for one year.

Applications, with copies of not more than three recent testimonials, must reach me on or before Monday, the 29th inst., addressed to me at the Town Hall, Ealing, London, W., endorsed outside "Re Auditor."

Canvassing members of the Council will disqualify.

GEO. E. BRYDGES,

Town Clerk.

16th January 1906.

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**Leading Articles.**

**Receivers and Advances.**

A FULLER consideration of the decision of the Court of Appeal in *In re The Glasdir Copper Mines, Lim.*, which appeared on p. 48 of the last volume of our Law Reports, serves to even further emphasise its importance from the point of view of those of our readers who from time to time have occasion to act as receivers, or as receivers and managers. It may now, we think, be taken as settled law

that while a receiver appointed by the Court to carry on a business will be personally responsible to the creditors of the business for goods supplied to his order, and services rendered upon his instructions (subject, of course, to his right to be indemnified out of the estate), the position of the receiver towards creditors for advances made to him is a little more complicated. Advances made to a receiver which have not been authorised by an order of the Court would, we are of opinion, be due to the person making such advances by the receiver personally. Strictly speaking, his right to be indemnified out of the estate is in such cases open to question, as theoretically a receiver ought not to borrow without the leave of the Court, but in practice such borrowings are frequently necessary owing to the delay that usually occurs before leave can be obtained; and, assuming that the receiver had acted reasonably, there can be little doubt that he would be allowed such payments as he might have made out of the moneys so advanced to him, and would thus *pro tanto* be covered so long as sufficient assets were realised.

In the case of moneys borrowed in pursuance of an order of Court it is very usual for a formal charge to be executed by the receiver upon the assets in favour of the lender, and generally such charge contains an express proviso releasing the receiver from personal liability, and requiring the lender to look wholly to the estate for repayment. In such a case the exact measure of the receiver's liability has been clearly defined by express contract. Where no such charge has been executed, no special agreement has been come to between the receiver and the lender, the terms of the order, so far as they apply, would govern

the relationship between the parties, but under normal circumstances the personal liability of the receiver would continue. It frequently happens, however, in receivership actions, that the lender is the plaintiff, or one of the plaintiffs, and then, as in *In re Glasdir Copper Mines, Lim.*, a question arises, in the event of there not being sufficient assets realised to repay advances and expenses of the receiver in full, as to which is entitled to priority. The Court of Appeal has held that the claims of the receiver to be reimbursed his expenses and paid a fair remuneration, come, in the event of a deficiency of assets, before the claims of the plaintiff in the action to be paid even for advances to such receiver—that is to say, it is held, in effect, that such advances are, under these circumstances, not repayable out of the first moneys received by the receiver, but are merely repayable first out of whatever balance may remain in hand to the credit of the receivership action after the claims of the receiver have been satisfied. At first, the reason for this somewhat important differentiation between the right of a plaintiff lender and an outside lender may seem a little obscure. When, however, it is recollected that in the event of a deficiency of assets the plaintiff is always liable to pay the proper costs of his own side, the apparent anomaly becomes at once intelligible. Obviously there would be nothing to be gained by holding that a plaintiff lender was entitled to be repaid advances in preference to the receiver, if the effect of such ruling was to leave the receiver in the position of having to at once call upon the plaintiff to pay him all proper charges incurred which the estate proved insufficient to provide for.

From the point of view of our readers, it will be seen that in all cases practicable it is in the

interest of the receiver that he should borrow such moneys as may be necessary, if possible, from the plaintiff, and that the plaintiffs in the receivership action should from choice be men of substance, who will be able to pay all proper charges incurred in the event of the assets proving insufficient.

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#### **The Auditor's Certificate and Report under the Act of 1900.**

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**I**N spite of the voluminous discussion as to the true meaning of Section 23 of the Companies Act, 1900, which has been continued in these columns almost without cessation during the past five years, the paper read by Mr. FRED. A. JENKINS, F.C.A., at a recent meeting of the Bristol Chartered Accountants' Society contains several points which make it worthy of careful consideration. This paper, which was reproduced in our issue of the 30th ult., was one of three read at a meeting of the Society at which Mr. W. B. PEAT, F.C.A., the Vice-President of the Institute presided, and was in every way worthy of the occasion.

The lecturer takes as his starting point the statement that We need no Act of Parliament to define our duties, which are the same now as they ever have been, neither can any Act alter or affect the discharge of those duties. This statement in general terms is a little startling, and if literally interpreted could only lead to the greatest possible confusion, while possibly subjecting some of its supporters to very serious legal responsibilities. By defining that responsibility it can certainly help to educate public opinion, and thus indirectly reduce the measure even of moral responsibility by making absolutely clear the full extent of that which the client can in

reason expect. But, even if we assent to the proposition that the true measure of the responsibility of a professional man cannot be whittled down by Act of Parliament, we must at all events admit the right of the Legislature to impose new duties, which, even when they clash with previously conceived notions, must be duly discharged. The auditor may say he requires no Act of Parliament to tell him when he has discharged his duty to his client, but, for all that, it is insufficient for him to make his own conscience his sole guide. It is necessary that his duties should be discharged in whatever manner may have been prescribed by the Legislature; and although the deficiencies of statutory prescription may be—and indeed, of course, should be—supplemented, such regulations as may have been imposed by Act of Parliament must in all cases be respected, even supposing they should seem to be directly opposed to what individual practitioners may consider to be wise or prudent. The point has, perhaps, not been so clearly stated before, but there can, we think, be little doubt that the great divergence of practice in connection with auditors' certificates, except in so far as it is based upon mere thoughtlessness, results from practitioners seeking to set up their own methods as being better for the client than the statutory methods, and therefore to be preferred. It seems to us unnecessarily quixotic for an accountant to voluntarily run serious pecuniary risks in such a case; and certainly it would seem unwise unless he is absolutely convinced, not merely that his own methods are the better, but also that the statutory methods are bad.

The point which those who differ from us seem to overlook is that the Act has prescribed an entirely sufficient means of enabling the

auditor to communicate his views to those who are alone interested in the matter—namely, those shareholders who attend the general meeting, pass the accounts, and vote the dividend. It is only for the purpose of these resolutions that the least necessity exists for acquainting shareholders with the true position of affairs, and those shareholders who take matters seriously may fairly be expected to attend the general meeting, either personally or by proxy. It is possible that in isolated cases information which is limited to the general meeting may be kept back from some few shareholders to whom it would have been of legitimate interest and advantage; but this is as nothing compared with the great benefit to be derived from the statutory provision enabling an auditor to freely communicate his views to the shareholders without having all the time to keep an eye upon the general—and perhaps hostile—public. A report that can without detriment to the company be seen by the whole world must in the nature of things be one which, without detriment to the shareholders' interests, might equally well have been suppressed altogether.

If the whole question were merely one as to whether auditors ought not, in the due discharge of their professional duties, to give their clients more than the bare minimum amount of information that the law required, there would be very much to be said in favour of the full publication of the report. But when, as it seems to us is the case, the whole policy of the Act is against the publication of the report, so as to ensure that the auditor may be free to make whatever communications he thinks fit without any thought of consequences, we certainly do not agree that no Act of Parliament can alter the manner in which an auditor

should discharge his duties. Mr. JENKINS appears to take his stand upon the assertion that the spirit of the Act is that the shareholders as a body shall be made acquainted with the report, and that anything that can legitimately be done to further this end should be welcomed. Our retort is that the spirit of the Act is that the auditors' report to the shareholders shall be seen only by them, and that therefore any steps which may result in the report being disclosed to persons other than shareholders are directly in opposition to the spirit of the Act, as they make it impossible for the auditor to word his report with that entire freedom which is absolutely necessary if the best interests of the company are to be considered.

Another point, however, to which attention is drawn—which, we agree with the lecturer, is far more serious—is the indefensible practice which has grown up in certain quarters of appending what appears to be a report to the certificate at the foot of the published Balance Sheet and simultaneously forwarding an unpublished report to the shareholders in general meeting in entirely different terms. We have no hesitation in saying that such a practice is seriously likely to mislead, and quite apart from its undesirability from a professional point of view is, we think, fraught with the very gravest danger to the auditor if questions affecting his legal responsibility should arise. This point was raised in a letter which appeared recently in the columns of *The Financial News*. In view of its importance we make no apology for reproducing it in full, only suppressing names, which for our present purposes are immaterial:—

Sir,—At the annual general meeting of a company, held recently, a point was raised with regard to the auditors'

report on the Balance Sheet, which appears to me to be a very interesting one, from a shareholder's point of view. In the ordinary course, at the annual general meeting, when accounts are presented to the shareholders, the secretary is called upon to read the notice convening the meeting and also the auditors' report. At the meeting to which I refer the auditors' report, printed at the foot of the Balance Sheet, was, by a clear oversight, omitted to be read. A shareholder present, having noted the omission, pointed it out to the chairman, who directed the report to be read to the meeting, whereupon I was surprised to find that the auditors' report, as then read, contained further, to my mind, relevant information regarding the accounts to that printed at the foot of the Balance Sheet.

A representative of the auditors, who was present, on my referring to the matter, informed the shareholders that it had never properly been decided as to the exact form in which the auditors' report should be made. My contention, however, is that, inasmuch as the auditors are appointed by the shareholders, and not by the board, any report which they may make regarding the annual accounts should be communicated to the shareholders *in extenso* at the foot of the Balance Sheet issued to the shareholders. I would respectfully submit that the point I raise is one worthy of consideration, and therefore hope you may see your way to find space in your valuable paper to insert this letter.—Yours faithfully,

SHAREHOLDER.

The writer of the above letter clearly does not understand that the Legislature *has* provided how an auditor shall report to the shareholders, but his protest against the real (statutory) report and the printed report differing in material particulars cannot be too strongly supported. Of course, the only possible remedy is to omit everything in the nature of a report from the printed certificate.

### Weekly Notes.

**The Railway Fires Act.** *The Law Journal* points out that it is very unusual for an Act of Parliament to be suspended from coming into operation until two and a-half years after it has become law. The Railway Fires Act, 1905 (which is the case in point), received the Royal Assent on 4th August last, yet will not take effect until January 1st 1908! The measure provides, superseding the rule in *Vaughan v. The Taff Vale Railway Company*, but applying that in *Fletcher v. Rylands*, that

where damage is caused to agricultural land or crops by fire arising from sparks or cinders emitted from a locomotive, the fact that the engine was used under statutory authority shall not affect liability for damages. The railway companies cannot complain that they have not time within which to look round, and meantime, doubtless, inventors will be busy seeking new devices.

**National Bank of Switzerland.** The Berne correspondent of the *Frankfurter Zeitung* gives some interesting particulars regarding the new Swiss National Bank, which has now received the final approval of the Federal Parliament. The bank is established merely for the issue of notes and the discounting of bills. It is a compromise between a State bank and a private bank in the capitalisation of which the Cantons participate as to two-fifths, the hitherto existing banks of issue as to one-fifth, and private capital as to the remainder of the shares. It is managed under the co-operation and supervision of the Federal Government. The metal reserve is fixed at 40 per cent. of the value of the notes in circulation. Arrangements are made for the Federal Government to share in the profits after 4 per cent. has been paid. The duration of the charter is twenty years, and the bank is responsible to—

The General Assembly of Shareholders.

The Bank Council.

(40 members, 15 of whom are appointed by the General Assembly, and 25 by the Federal Council, for a period of four years.)

The Bank Committee.

The Local Committee.

The Committee of Revision; and

The Directorate.

Most continental banks make quite a feature of the flotation and management of industrial concerns and stockbroking, &c., but the Swiss institution seems to have been conceived on British lines.

**American Insurance Reform.** The recent revelations in insurance methods as they are understood in the United States have been followed with much interest in this country, and the appended reported recommendations of the Armstrong Investigating Committee are worthy of notice:—

- (1) That policy-holders have an effective voice in the government of the companies.
- (2) That there be full publicity to the policy-holders in regard to the management of the company's affairs.

- (3) That a uniform system of audits and accounts be prescribed by the State Insurance Department.
- (4) That policies be limited to certain standard forms.
- (5) That policies be safeguarded further than at present against forfeiture.
- (6) That deferred dividend policies be either prohibited or greatly restricted.
- (7) That the companies be obliged to make an equitable distribution of the surplus to policy-holders at stated periods.
- (8) That the companies make larger investments in real estate bonds and mortgages.
- (9) That the control of subsidiary companies be prohibited.
- (10) That investment in corporate bonds be regulated so as to prevent speculation and losses in attempts to float doubtful enterprises.
- (11) That deposits with or loans to moneyed corporations be suitably restricted.
- (12) That the discretion of the directors be subject to judicial and administrative review.

The details of working out these recommendations in a practical manner will necessarily take time, and may involve a slight change of basis from the original ideas, but it seems fairly certain that the ultimate object is to prevent insurance directors from serving conflicting interests, and it is by no means unlikely that a Bill will be put forward prohibiting the control by a life assurance company of any subsidiary. Where so much that is undesirable exists, the reformers will do well to clear away the wreckage before commencing to rebuild.

#### **An Association of Elective Auditors.**

We understand that an Association of Elective Auditors has been organised, and has its head-quarters at Hadfield.

At a time like the present, when there seems every likelihood of elective auditors being at last improved out of existence, it seems a little late in the day for them to attempt to organise. Possibly, however, the object of the movement is to protect its members against this threatened extinction. If so, it may very likely work up a fair membership among the class of individuals who—some by their incompetence, and others by their excessive zeal—have brought municipal auditing into contempt during the past 24 years, but we venture to think that outside support is not likely to be very considerable.

#### **The Local Authorities' Accounts Inquiry.**

The names of the Departmental Committee appointed to inquire into the accounts of Local Authorities have now been announced. They are as follow:—Mr. Walter Runciman, M.P. (chairman), Mr. J. Bromley,

C.B., Mr. T. Pitts, C.B., Mr. R. Barrow, Mr. E. P. Burd, Mr. J. J. Burnley, Mr. J. Gane, and Mr. Merrifield. Mr. G. R. Snowdon, of the Local Government Board, will act as secretary. From the above list it will be seen that the President of the Board is not acting upon the recommendation of the Joint Parliamentary Committee of 1903, for that Committee suggested an inquiry by representatives of each of the leading societies of professional accountants. Under the circumstances there is, of course, considerable risk that, whatever the finding of the Committee, it will not meet with general acceptance. It is, however, only fair to await its report before expressing any opinion with regard to the matter one way or the other.

#### **The Unemployed Fund.**

At a meeting of the central body for London under the Unemployed Workmen's Act, 1905, which was held last week, it was reported that £42,912 had been received from the Queen's Fund, and that £4,650 had been expended to date. It was decided to engage an outside professional accountant, at a salary of £150 a year, to be responsible for the keeping of the accounts. This proposition did not, of course, suit the more progressive members, but bearing in mind that whatever course it pursues the central body is fairly sure to come in for a good deal of criticism, it has no doubt acted wisely in narrowing the issue by at all events making the accuracy of its stated accounts a matter beyond discussion.

#### **The City Corporation Finances.**

At a meeting of the Court of Common Council held last week it was unanimously resolved: "That the thanks of the Court be tendered to Mr. Harvey Preen, F.C.A., whose expert services as Chairman of the Coal and Corn and Finance Committee during the years 1904-5 have ensured a proper adjustment of expenditure to income, and demonstrated beyond doubt the efficacy of the budget system as a controlling influence on the finances of the Corporation." In proposing the resolution, Mr. Deputy Ellis stated that the result of Mr. Harvey Preen's first year's work was the showing of a surplus of £15,000, and that last year would probably produce a surplus largely in excess of £6,000. These excellent results of skilled financial control are as satisfactory as is the Council's appreciation of the fact that they are directly due to the chairmanship of a member of the accountancy profession.

**An Old Bankruptcy.** At the Burton County Court on the 17th inst. his Honour Judge Lindley ordered that a sum of about £300 be divided among the creditors of one Scattergood, who failed at Burton-on-Trent 26 years ago and afterwards proceeded to the States without obtaining his discharge. The creditors only received 1s. 3d. in the £ at the time, but a relative of the bankrupt subsequently died leaving him £200 in an English bank, which has since increased by accumulation of the interest to something like £300. The creditors, if they are still to be found, are to be congratulated upon their good fortune, but that the interest should have accumulated to 50 per cent. of the original amount while the money was awaiting a claimant does not speak very well for the vigilance of the officials whose duty it is to look after the interests of the creditors of undischarged bankrupts after the trustee has obtained his release. The question is one that certainly merits more attention than it has hitherto received, inasmuch as the Bankruptcy Discharge and Closure Act makes it impossible under any such circumstances for the creditors to appoint a professional trustee to look after them.

**A Director's Qualification.** Mr. Justice Warrington had an application before him last week in the matter of *The City of London Bond and Debenture Corporation, Lim.*, which demonstrates the need for a more reasonable appreciation of their position and duties on the part of directors generally, to which we drew attention when commenting recently on a paper read by Mr. Francis W. Pixley, F.C.A., at a meeting of the Institute of Directors. In this case the application was for an order that the liquidator's certificate and list of contributories should be varied by excluding the applicant's name as a holder of ten £50 ordinary shares in the company. It was alleged that the applicant's name as a director of the company had been placed upon the prospectus without his authority, but it was admitted that he had subsequently attended meetings of the board and also the statutory meeting of the company, and that the promoter had promised to give him his qualifying shares, although he had never done so. Under these circumstances his Lordship had no alternative but to hold that the applicant had withdrawn or waived any objection that he might have raised to the statement that he was a director, and that, as he had not qualified, the liquidator was justified in putting his name on the list of contributories for the amount of his qualification shares. It is little

short of extraordinary how many otherwise excellent persons seem to be under the impression that they can properly embark upon their duties as the director of a company with the acceptance of a secret present from one of the very persons from whom, should the need arise, they are expected to protect the shareholders.

**Municipal Audits So-called.** Our contemporary *The Municipal Journal*, in its issue of last week, attempts to deal with our article of the 13th inst., in which we stated that the only possible objections that could be raised to any form of audit are (1) that those responsible for the business management do not desire the true state of affairs to be generally known, or (2) that they do not admit the competence of those deputed to perform the audit to discharge their duties. Our contemporary says "*The Accountant* exists to serve the interests of those professionals who make money out of the audit of accounts. They are an admirable body of gentlemen who, as financiers, are head and shoulders above the auditors of the Local Government Board. This, however, is not a question of mere finance. Provisions for depreciation and obsolescence, the methods of charging, the allocation of profits, and other considerations that are political—not, of course, using the word in its party sense—and scientific, enter into the problem." It would indeed be interesting to know what all this has to do with the subject at issue. We, of course, grant that what our contemporary describes as the political aspect of the problem is entirely outside the scope of any audit properly so-called, and it certainly would not be infringed upon by professional auditors, who at least may be relied upon to know what an audit is and what it is not. If any scheme of financial control by a central body is to be formulated, such control should certainly not be exercised through professional auditors. Our point is, however, that before any control can be exercised, or even any criticism—favourable or otherwise—be offered, the facts must be ascertained. A professional audit would reveal those facts, which at present are unfortunately frequently obscure, and it is to be feared not infrequently intentionally obscured. Possibly we do exist to serve the interests of those who make money out of the audit of accounts, but, be that as it may, the political aspect of the matter is not that which interests us, nor is it the reason why we consistently advocate the importance of a proper professional audit. Among the ranks of professional



accountants there are probably quite as many advocates of municipal progressiveness as among any other class of educated men, but these at least know that a cause worth pursuing was never yet hindered by straightforwardness and truth. We have no hesitation in saying that those who seek to conceal what is being done by our local authorities are the real enemies of municipal progress.

### **Correspondence and Enquiries.**

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### **Income Tax.**

*(To the Editor of The Accountant.)*

SIR,—I should be glad to have your views upon the following case:—

A. B. carried on business, and was assessed under Schedule D. His son, C. D., was not a partner, but an employee of the business at a salary. This salary was assessed under Schedule D. On August 1st 1905 A. B. retired from the business, and handed it over to C. D. When C. D. became proprietor of the business his salary ceased to be an expense chargeable against the profits, at least for the purpose of assessment.

The returns were made, and the assessments completed, before these arrangements were effected.

C. D. claims to have the assessment on his salary reduced to one-third—i.e., four months from April 5th to August 1st.

The Surveyor of Taxes does not agree to this, and claims tax on a full year's salary to April 5th 1906.

I submit that an income can only be taxed for the time during which it is actually received.

Yours respectfully,

17th January 1906.

C. W.

#### **Directors v. Auditors.**

*(To the Editor of The Accountant.)*

SIR,—We have observed in your issue of the 13th inst. an article, under the heading of "Directors v. Auditors," in which reference is made to ourselves.

In that article you state that the investments in question "might conceivably represent a *legitimate* Secret Reserve." This strikes us as an extremely dangerous principle to take up and defend.

We, for our part, fail to see how an auditor who gives an unqualified certificate in accordance with the Companies Act, 1900, could justify the exclusion of any asset from the company's Balance Sheet of which he had knowledge.

With regard to your criticism of the fact that our report was printed at the foot of the Balance Sheet, we would point out that the Balance Sheet is printed and published by the Board and not by ourselves, and had the Board wished to do so they could have printed the certificate only, relying on the fact that the Act would give them justification.

While in principle we are entirely in accord with your view that the report is a confidential document which should be read only to those shareholders who are present at the meeting, this is a course which is now very rarely followed in practice. A certain number of firms, including ourselves, adopted this when the Act came into force, but it was found that shareholders generally objected to it, preferring to have the report in full with the Balance Sheet.

With regard to other matters in your article, we do not feel, owing to our position in the matter, at liberty to comment freely.

We should like, however, to say in conclusion that in giving you the facts we had not in mind the airing of a grievance of our own, but a desire to call the attention of the profession to the unsatisfactory nature of their tenure of office, with a view to its being remedied.

Yours faithfully,

CREWDSON, YOUATT & HOWARD.

London, 18th January 1906.

[See our leading article this week.—Ed. Acct.]

#### **Colliery Shortworkings.**

*(To the Editor of The Accountant.)*

SIR,—In reply to your correspondent's—"Tonnage Rent"—interesting letter on colliery shortworkings, he makes out a very good case for the charging of the actual rent payable, regardless of shortworkings annually against Revenue, but where the excess of minimum rent over royalties earned is treated as an asset every precaution should be—and doubtless is—taken to see that it is only so treated when there is no practical uncertainty as to it being recouped out of subsequent workings.

In my opinion also, the position of present shareholders must be considered; and why should future shareholders benefit at their expense, as they undoubtedly would if shortworkings were dealt with on "Tonnage Rent's" system? I do not see sufficient danger in the system against which your correspondent argues to justify his contention; and it seems to me the correct way is to charge against each year's workings the actual royalties on such workings, and to carry forward the difference between the minimum rent and the royalties payable as a payment in advance on future workings: provided always that there is reasonable cause for the belief that the future "get" will allow of this, and at the same time having regard to any restrictions the lease may impose.

I am, Sir, yours faithfully,

17th January 1906.

ROYALTY.

#### Co-operative Dairies.

(To the Editor of *The Accountant*.)

SIR,—I shall be pleased if any of your readers can inform me if and where any literature on the formation and development of a Farmers' Co-operative Dairy can be obtained.

Yours faithfully,

19th January 1906.

STUDENT.

#### Form of Balance Sheets.

(To the Editor of *The Accountant*.)

SIR,—With regard to the paper in this month's issue of *The Accountants' Journal* dealing with the criticism of a Balance Sheet, the author states, under the heading of "Debentures and Mortgages," that the liability of the company upon debentures should be shown at the full amount, *less the discount*, if they have been so issued. Is this not incorrect, as the company's liability is the par value of the debentures and should be stated at that amount, the discount being included on the asset side of the Balance Sheet under some heading such as "Discount on Issue of Debentures"? I am very pleased to see that the suggestion I made to *The Accountant* some time ago has been acted upon by Mr. M. Webster Jenkinson, and I trust that the column entitled "Overheard in the Office" will be in the future one of the prominent features of your very interesting paper.

Yours faithfully,

COUNTRY PRACTITIONER.

19th January 1906.

#### Receipt Stamps—Evasion.

(To the Editor of *The Accountant*.)

SIR,—I shall be obliged if you can inform me whether a firm which has received a cheque week by week in payment of its weekly accounts can *legally* give a collective receipt for a number of the cheques, by putting all the weekly accounts on one statement and affixing one penny stamp to the statement instead of giving a separate stamped receipt for each amount, which has been over £2 in each case.

Could you also give me the date and reference of an action, *The Attorney-General v. Carlton Bank, Lim.*, for the recovery of a considerable sum by way of penalties, by reason of an officer of the bank having received moneys from another officer of the company (who had collected such moneys on behalf of the bank), giving the latter initialled documents as an acknowledgment he had received the amounts shown on such document without giving stamped receipts.

Yours faithfully,

20th January 1906.

ENQUIRER.

[For reports of this case, *Attorney-General v. Carlton Bank, Lim.*, see 25 *Accountant Law Reports*, pp. 68-98.—*Ed. Acct.*]

#### Licensing Act and Income Tax.

(To the Editor of *The Accountant*.)

SIR,—The following memorandum issued by the Brewers' Society to its members in December last, will, no doubt, be of interest to "License," whose inquiry appeared in your issue of the 20th inst.:—

"The amount of the levy can be deducted in the Schedule D returns of a brewer in respect of licensed houses which he occupies by a manager, but not in respect of houses let to tied tenants. This view is based on the opinion of Mr. Danckwerts, K.C., recently taken, and he bases his view on the decision in *Brickwood v. Reynolds*, decided on the analogous case of repairs to licensed houses. The basis of the decision is that only such matters may be deducted as relate exclusively to the business of the brewer, whereas the business carried on in a tied house is essentially the business of the tenant and only indirectly the business of the brewer."

Yours faithfully,

J. W. STEAD, F.C.I.S.

Leeds, January 22nd 1906.

**Accountants Touting for Business.***(To the Editor of The Accountant.)*

SIR,—Referring to the letter under title "Accountants Touting for Business" in the last number of your valuable paper, may I suggest to your correspondent that the reply given by Dr. Samuel Johnson to the question, "Should lawyers solicit employment?" is applicable to the case under consideration. I give below the extract as it appears in Boswell's Life.

*Boswell.*—"You would not solicit employment, sir, if you were a lawyer?"

*Johnson.*—"No, sir; but not because I should think it wrong, but because I should disdain it. However, I would not have a lawyer to be wanting to himself in using fair means. I would have him to inject a little hint now and then to prevent his being overlooked."

I am, yours faithfully,

22nd January 1906.

FREDERIC DIXON.

## **The Institute of Chartered Accountants in England and Wales.**

THE following is a list of applicants, admitted at the Council meeting held on the 10th January 1906, who completed their membership before the 25th inst.:—

### *Associates elected Fellows.*

Ashford, Harcourt (Gibson & Ashford), 39 Waterloo Street, Birmingham; and at London.

Dangerfield, Athelstan, 56 Cannon Street, E.C.

Fletcher, Ernest Heming (Denman & Fletcher), Bank Chambers, Yeovil.

Frith, Ernest Henry (E. H. Frith & Co.), Rood Lane Chambers, E.C.

Halsey, Laurence Edward (Price, Waterhouse & Co.), 3 Frederick's Place, Old Jewry, E.C.

Hovey, Charles Howell (C. H. Nevill, Hovey & Co.), 1 & 2 Great Winchester Street, E.C.

Thurgood, Harry Voce (Drury, Thurgood & Co.), 11 Queen Victoria Street, E.C.; and at Guildford.

Whittaker, Arthur, Parr's Bank Buildings, 3 York Street, Manchester.

### *Admitted as a Fellow.*

Riches, Henry (Frank Hyland & Riches), 81 Cannon Street, E.C.; and at Ashford, Folkestone, Hastings, and Maidstone.

### *Admitted as Associates in Practice.*

Barron, Arthur Henry, 13 New Street, York.

Costello, James Edward, 90 Cannon Street, E.C.

## **Meetings for the ensuing Week.**

*Monday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—Library and Publication Committee, at 3 p.m.

*Tuesday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—General Purposes Committee, at 3 p.m.

Students Societies' Grants Committee, after above Committee.

*Thursday*—EDINBURGH CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "The Valuation of Public Undertakings in Scotland for Assessment Purposes," by Mr. Robert Jackson, H.M. Assessor of Railways and Canals in Scotland, at the Hall of the Society of Accountants, 27 Queen Street, at 8 p.m.

*Friday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—Parliamentary and Law Committee, at 3 p.m.

## **Reviews.**

### **A Guide to Income and Property Tax Assessment and Recovery, Complete with Forms and Full Instructions for Taxpayers.**

By H. THEOBALD, Incorporated Accountant.

London, 1905: The Pioneer Press. Price 3s. 6d. net.

This little work contains a great deal of useful information arranged in a popular manner. The author has boldly discarded the method of the Income Tax Acts, and classifies his subject, not according to the nature of the property taxed, but according to the description of the taxpayer. Thus we find the familiar Schedules A, B, D, dealt with under such heads as "Property Owners," "Farmers," "Traders," "Professional Men," &c., "Clergy," and "Ministers." From the popular point of view such an arrangement has its advantages, but it is one a little difficult to consistently adhere to, a difficulty apparently felt by Mr. Theobald in dealing with Schedules C and E. The text is divided up into

articles, for each of which authority is given, and so far as the statutory authorities are concerned they are for the most part correct, though one or two slips occur. The case references are, however, unfortunately practically useless, no known system of reference being adopted.

### **A Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards.**

By FRANCIS RUSSELL, M.A.

Ninth Edition by EDWARD POLLOCK and HAROLD WARREN  
POLLOCK. B.A.,

London, 1906: Stevens & Sons, Lim.; Sweet & Maxwell, Lim.  
Price 30s.

The ninth edition of this standard work on the Law of Arbitration presents no new feature of importance calling for any lengthy remarks at our hands, but the extension of the jurisdiction of the Masters under Order XIV., R. 7, of the R. S. C., whereby on an application for judgment under that order an order may be made, with the consent of the parties, referring the action to a Master as a referee under the Arbitration Act, 1889, Section 14, is duly noticed, as well as several alterations made in some of the statutes containing provisions for arbitration, notably by the Agricultural Holdings Act, 1900, and the Factory and Workshop Act, 1901.

### **Some Points in Municipal Accountancy.**

By GEORGE SWAINSON, Esq., F.S.A.A., F.L.S.  
(Borough Treasurer of Bolton).

A PAPER read before the Lancashire Students' Society on November 25 1905.

Your Secretary has pressed me very much to give you a paper, so I thought I would adopt as a title something that would give us a chat round the question of Municipal Accounts.

In the first place, I want to speak to you about our methods in Bolton as to the use of the Journal. Perhaps as a preliminary I had better read to you a short article I wrote in January 1898, entitled "The Journal in Relation to Corporate Bookkeeping":—

"Practical hard-headed Englishmen kick against the practice of journalising as elaborated on the Continent. They want to be able at any moment to turn up a

Ledger Account and find at a glance all the information they seek for. This is one of the most cogent arguments against considerable prominence being given to a Journal in English accountancy, since the Journal cannot possibly be complete in itself, as the Ledger may be. The tendency of the old style of bookkeeping was for all the detailed explanations in the accounts to be only found in the Journal, the Ledger postings being reduced to the veriest minimum of labour. With this condition of things the principal of the firm would only look to his Ledger for the *balance* of each account, and all particulars, if needed, must be hunted up in detail through the Journal. Now, this is not a satisfactory state of affairs to occur in municipal bookkeeping, for no intelligent idea can be formed at a glance as to what such summarised items really mean; and a chairman of a finance committee or town councillor would obtain from such Ledger little more insight into the year's detailed proceedings than if he were studying a column of *hieroglyphics* on Cleopatra's Needle.

But the Journal has its uses; it is against the exaggerated abuse and the summarising of entries in a Corporation Ledger that I protest.

Fortunately, in England there is no law for the compulsory use of a Journal as there is on the Continent, and therefore, however valuable and economical the before-described method of posting may be found in large commercial undertakings, where the chief object is to get out the profit or loss as quickly as possible on each item of trade or departmental section, it is very much out of place where these results are of little or no moment, but where the detailed items of expenditure showing where the ratepayers' money has gone are of *every importance*.

On the other hand, in some corporation offices the accountancy staff is cut down to the lowest possible limit, and it is natural in these cases for the accountant to fall into the temptation of posting his Ledger from his Journal or Summarised Invoice Book without detail, and we know that this has been carried to such an extent in some large towns that the Impersonal Ledger is little more than an index to the Journal or Invoice Book, the Ledger Account being ruled in columns with all the requisite headings, which will enable the accountant at the close of the year to prepare and print his Abstract of Accounts with little or no trouble.

This may be all very well if the printed Abstract of Accounts is everything; we know it is practically adopted by the accountants to the railway companies, but this closes the door to any examination of the

Ledgers by any but experts. Should this be the goal which corporate accountants should strive to attain, or is it not rather to be desired that 'he who runs may read' the Impersonal Ledger wherever it may be opened? We have no doubt this will be the desire of most town councillors if the two cases were fairly laid before them.

I was led into this train of thought and argument from a re-study of the late Government auditor's (Mr. Meredyth Evans) 'Exemplification of the Accounts of Local Authorities,' and especially the elaborated Journal entries which he recommended to be entered up through the Minute Book of the authority, as this alone would be binding upon them. This is the old Poor Law Board system, which is enforced in all Union Accounts, as I remember well when at Accrington, and it is no doubt the Local Government Board's equivalent to the Continental legal prescription to enter everything in a Journal; but we must not have any law of this kind, however, effective in Germany, thrust upon us. This, of course, goes to the opposite extreme, and could only be adopted in small subordinate accounts like those kept by clerks to guardians and small local authorities. The immense municipal concerns of gasworks, waterworks, tramways, and electricity, now undertaken by all the large boroughs, would veto this peremptorily, and time would not allow of the reading of such minutes, and no town clerk's staff would be equal to the journalising ability required for the purpose. In my opinion, in corporation bookkeeping the invoices should be kept indexed and largely used in place of Personal Ledgers.

The expenditure contained in these accounts can be posted in the Impersonal Ledger in full detail, and Personal Accounts obviated except in cases of contracts, and these may be kept in subsidiary Ledgers. It must not be forgotten that the monthly accounts, when accepted by the committees, are at once paid in cash, so that the entries may be posted into the Cash Books from the Schedules of Accounts voted or from the invoices, for these have no right to be posted in the Ledgers until they have been so approved and accepted by the Council.

It is after the ordinary Cash Book postings have been made that the Journal becomes of any real use in Corporation Accounts; in the numerous transfers from stocks and the dividing up of the wages and other expenditure among the various departments, the writing down of capital and accumulation of surplus assets, all of which are merely matters of account. But I would severely restrict the use of the Journal to these entries alone, and, of course, for all Ledger transfers, so that the Journal in corporate bookkeep-

ing would then become the book of reference for the few internal transactions, and the Impersonal Ledger for all details of expenditure, &c.

Of course, there would be a good many entries into the Cash Books from rentals and other subsidiary books of the nature of Day Books, but it is quite easy with these and the invoices to nearly *supersede the Journal altogether*, and the only reason I would permit a Ledger clerk to keep one is as a kind of memorandum book to enable him to see that all necessary transfers in the Ledger have been duly made, but with this exception I have come to the conclusion that the keeping of a Journal as such is absolutely unnecessary in corporation accountancy, and the practice of more years than I care to count, with the Municipal Accounts of Huddersfield and Bolton, satisfies me that this view of the matter is sound and practicable."

It will, no doubt, be of interest to you if I now describe the system of bookkeeping which prevails in the Treasurer's Office in Bolton. All invoices which are received in my office are despatched to the head of the department from whence the order was issued, and to which the goods must have been delivered. The head of each department keeps his own Contract Ledgers, &c., so he can certify whether such account is correct both as to particulars, prices, and extensions thereof. He then initials the accounts and returns the same to me a few days prior to the date of the monthly accounts meeting. These invoices are then checked by my accounts clerk from the indexed Invoice Books, reference being made to previous accounts paid to the same person in order that it may be certified *that each account has not been paid before*, and a stamp to this effect affixed thereto.

Each committee's accounts are then scheduled, and the schedule, when duly signed, constitutes the Council's order upon the Treasurer for payment. Immediately the monthly Council meeting has been held making such order for payment, I, as Treasurer, pay each account by forwarding cheques; an official form of receipt with reference numbers thereon accompanying each remittance, which is signed and returned to me, and pasted into a Guard Book from which the Cash Book is entered up and audited.

Any invoice which has been ordered by the Council to be paid (or for which I have authority to pay on the counter-signature of the Finance Chairman or Mayor pending an order for payment) is posted immediately to the Impersonal Ledger from the Cash Book, but ordinarily until an account is *approved* and passed for payment we do not reckon any such account as owing until the year end. But in order that our accounts may not be on the old system of receipts and payments, all accounts which were outstanding on the 31st March are brought into

account by journalising, debiting the several Impersonal Accounts and crediting a Sundry Creditors' Account; but this is the only occasion on which we journalise tradesmen's accounts. Where there is any important account in dispute, and especially in reference to *income-tax claims* not admitted, we always debit revenue and credit a Suspense Account with the *estimated liability* on March 31st yearly.

Instead of using Personal Ledgers each Invoice Book is fully indexed, so that reference is very easily made to all payments made to any person or firm from whom purchases have been made by the corporation, and, after a long experience in Huddersfield of the lack of value in return for the labour of keeping Personal Ledgers for all tradesmen's accounts, I strongly urge upon you the saving of labour gained by adopting our Bolton method.

You must also always bear in mind that the Treasurer's Abstract should not be merely a skeleton with only the variation yearly of amounts of expenditure and totals, as they are bound to be if you adopt the railway system of journalising summaries of expenditure to the Impersonal Ledgers. Our Corporation Accounts should have a newness—a freshness in their appearance yearly which the other system lacks.

Do not forget that the Municipal Corporations Act requires the Treasurer's statement to be a *full* abstract of his accounts. Surely this word "*full*" means something more than a mere summing up of totals under stereotyped headings. I may add that if cutting down of detail posting to a minimum was as essential with Corporations' as it is with Tradesmen's Accounts, then I should recommend for adoption some modification of the American Ledger Card system or Loose-leaf Ledgers, but these, I think, should not be adopted in corporation offices for the sake of saving a clerk or two.

The lines I have herein recommended are being largely adopted amongst the municipalities of England, and I know of some Treasurers who even adopted this method before we began it in Bolton. Recently the Borough Accountant of Barnsley sent out an inquiry to many of the large boroughs, asking the following question:—"Do you keep Personal Ledger Accounts with all your creditors and for every fund or account?" In reply I sent him a copy of my article in the *Incorporated Accountants' Journal* before quoted, and the result of his further inquiries as to our system was that he wrote me that he should adopt our methods in the new system of bookkeeping he had inaugurated at Barnsley.

Now I was in hopes that this matter might be dealt with by someone else in a paper on "The General Standardisation of other Municipal Accounts besides Tramways," but I have not been able to prevail upon any accountant to take the matter up. I learned, however, during my

inquiries that especially in the centre and south of England there is a strong leaning towards continuing the old method of journalising everything, whatever additions to the staff this may demand. One gentleman on the south coast wrote me: "That the value of the Journal is that it enables the head of the department to see at a glance the whole of the entries made in the books, and consequently the chief Ledger clerk has always before him what you may call a calendar of the actual events for the month, and when a change in the office takes place it involves a minimum amount of dislocation of work; and, in addition, if the staff is one with ambitions to satisfy, here is the scope for *spade work* on the part of the juniors. In another borough on the south coast where the Journal was brought into full use it happened that immediately after the accountant left for a higher position the chief clerk also left, but the newly-appointed Borough Accountant, though stranded with juniors, had fortunately through the use of the Journal given to him a key to the whole situation without any undue waste of time, either on his part or his assistants."

This, no doubt, is a distinct value in keeping a Journal, but is this gain (once in an average of ten years) worth the labour of journalising everything for all time, which in the boroughs of Lancashire would mean a considerable increase of staff. Of course, if you are in charge of the accounts of a small borough, possibly a Personal Ledger is the best thing you can have with the Journal and you can journalise everything, but with a well-indexed Invoice Book, and accounts regularly sent in monthly or quarterly, a great saving of labour is effected. I have used both, and must say that I prefer to check the accuracy of the accounts through an indexed Invoice Book rather than through a Personal Ledger, because in the latter place the entries are as meagre as possible, while in the indexed Invoice Book you have the accounts themselves to refer to. Many of us find it would be impossible with our present staffs to journalise everything in Gas, Water, Markets, Tramways, and Electricity trading undertakings, besides all our ordinary rating accounts.

No one disputes the value of the Journal, but in these modern days, when the Yankees are teaching us how to minimise all the office labour, it seems to me quite sufficient for the Journal to be used for monthly or quarterly transfers only.

One method in vogue is to pass each invoice through an Invoice Abstract Book, thus debiting the Impersonal Accounts in total and crediting the tradesmen's accounts with the separate amounts in a Personal Ledger. This gives little or no information when you open the Impersonal Ledger for the inspection of a member of the Town Council. This is known as the Railway Companies' System, and its value is that it enables the Profit and Loss

and Charges Accounts to be closed quickly, but it does not affect the purpose for which Corporation Accounts are kept—viz., to enable the councillors to fully understand where the money has gone.

*Standardisation of Accounts on Income and Expenditure Lines.*

This important matter of uniformity in Corporation Accounts I first brought up when President of the Institute in 1887. You can therefore understand how delighted I am with the recommendations of the Metropolitan and Home Counties' Branch of the Institute, who have lately gone in so strongly for uniformity in Balance Sheets, but I am rather sorry to learn that the Council of the Institute was of opinion "that in view of the fact that *the Local Government Board was about to appoint a Special Departmental Committee* for the purpose of making an "investigation into the accounts of local authorities, no "useful purpose would be served by now entering into a "discussion on this subject." I differ from them entirely, holding a diametrically opposite opinion. *We ought to lead* and not follow the Local Government Board. As to the Special Departmental Committee appointed by the President of the Local Government Board, in my opinion we ought to be represented by our President, or some other up-to-date and go-ahead accountant that we possess. The Municipal Corporations Association might possibly be represented by a borough whose accounts are behind the times. It would be worse than a misfortune if the financial representatives of the municipalities of England on this Special Committee were those who adhere to the old system of receipts and payments. I am afraid the Local Government Board would find them "blind leaders of the blind."

I have recently had a good deal of correspondence and discussion with American professional accountants and city comptrollers, who are improving and altering their old out-of-date methods. I would like to submit for your inspection a few Abstracts of Accounts and Reports which they have sent me. They are now on the table before me. They are the accounts of the cities of New York, Chicago, Rochester, Minneapolis, Cambridge, &c. I particularly desire you to note the difference between the City Auditor's Report and Accounts of Pawtucket, R.I., and compare them with those of Minneapolis. A New York accountant, criticising this latter report, says:—"There are several "noteworthy features in the new form of the Minneapolis "Report. In the first place, there is a Balance Sheet, and "it is quite unique. In fact, a Balance Sheet is a rare "thing any way in a municipal report. Usually municipal "reports are nothing more than statements of receipts and "disbursements." I should inform you that the accountants and auditors of Minneapolis (Messrs. Jones, Cæsar, Dickinson, Wilmot & Co.) are leading the way in introducing Income and Expenditure Accounts among the

American cities. How greatly this is needed you will gather when I tell you that I am credibly informed by Mr. Le Grand Powers, Chief Statistician of the Census Bureau at Washington, U.S.A., that the rates and taxes in American cities are often allowed to run five, six, and even more, years in arrear. You will quite appreciate what an open door for misappropriation, fraud, and preferential treatment of friends, this method of dealing with Municipal Accounts on receipt and payment lines permits.

My reason for drawing your attention to the accounts of Pawtucket was that on page 21 you there see a "professed" Balance Sheet, but nowhere is there shown any details of the capital outlay, which had occasioned a debt of five millions of dollars, but since writing the above I have received from the well-known firm of Boston accountants, Messrs. Harvey, Chase & Co., their recent report as expert accountants for the city of Pawtucket, showing the new form of accounts which they recommend and which has been adopted by ordinance of the Pawtucket City Council regulating the new duties of the auditor and treasurer. This clearly shows how the bonded debt of Pawtucket is made up under the various statutory powers granted them by law for Waterworks, Sewers, Schools, Street Improvements, &c., leaving a margin of nearly a million of debt in dollars for ordinary municipal purposes. Every city in the States, I understand, has the power to borrow for these purposes to the limit of 3 per cent. of their total assessment, and Pawtucket, after much contention, has now proved by the expert's evidence that they are well within this statutory margin. Comparing the law in the United States with that in England, you will find a great difference; for instance, the Local Government Board with us will sanction expenditure up to twice the yearly rateable value, while in the States they are permitted to borrow for these municipal purposes only to the extent of 3 per cent. of their assessable value, but then there comes in a notable difference in *what this assessable value is made up of*. This assessment with them includes our property and income-tax, liquor licences, poll taxes, special taxes, and privileges and permits of a varied character, which amount, with the ordinary rateable valuation in the city we are referring to, with a population of only 40,000, to the large amount of 37½ millions of dollars, or about £7,530,000 sterling, so that you will quite understand that this is a very much larger assessment than that of our poor rate, valuing land and hereditaments, which is the only assessment on which we are allowed to levy rates and reckon our debt.

While the discussion is going on you are at liberty to peruse the various accounts, and particularly the report of Messrs. Harvey, Chase & Co., now on the table.

In his letter Mr. Harvey Chase, C.P.A., makes the following remarks:—

"I trust that your efforts towards standardisation of Municipal Accounts in England are bearing fruit, and I shall feel under much obligation if you can spare time to inform me what progress has been made and what the outlook is for the future."

I must ask you to tell me what you think the answer should be. What do you think will be the result of the Local Government Board's inquiry, and how soon will those few large towns fall into line with the rest of us?

#### *Income Tax on Profits.*

The next matter I wish to deal with is the perennial subject of income-tax claims, and this is largely connected with what I have to say further on in connection with electricity and tramway depreciation. It is, however, essential that the Borough Treasurers of England should be united in their action in relation to the Surveyors of Taxes. As some of you are aware from the *Financial Circular*, pages 166-170, in recent years I have succeeded in getting depreciation allowed in both my Electricity and Tramway Accounts. With respect to the tramways depreciation, there has been a very strong effort made by the Inspectors and Surveyors of Taxes to refuse to allow anything for the depreciation of the permanent way, claiming that the latter does not come under the definition of plant and machinery, mentioned in 41 and 42 Vict., chap. 7, Part 2 Taxes, but only to allow the replacement of the permanent way out of Revenue, or Renewals Fund. This is the point they raised with us in Bolton, and I was willing to leave the matter there temporarily, as I have been able to get by this latter method the whole of the original cost of the laying of our track 25 years ago. Of course, I may say that the whole of the metals have been relaid once, and part of it twice, within that period. It is absurd for them to claim that the metals are no part of the machinery of a tramways undertaking, for I don't think the Local Commissioners, with experience in depreciation generally, will take this view. As you will see from page 179 of the *Financial Circular*, the claim for annual percentage depreciation was deferred by our Commissioners until this year, and we are now claiming the depreciation set forth on page 51 of my Abstract of Accounts. This claim, however, the Surveyor of Taxes strongly resists as being in excess of the actual depreciation, and I have urged the Tramways Committee to reduce it somewhat before bringing the case before the Local Commissioners. As you are aware, the matter is entirely in the hands of these Commissioners, and recently our case has been very much strengthened by the result of the Manchester tramways depreciation appeal. There they have had allowed £51,600, being at the rate of £400 per mile for 129 miles, based on a ten years' life. Then for the rolling stock and machinery they have had 5 per cent. on £260,000 (the prime cost), and 3 per cent. on £9,754 for section boxes. This has so

strengthened our Bolton case that the Surveyor seems inclined to accept our claim of £360 per mile, if we will accept the 5 per cent. depreciation on the cars, electrical equipment of line, &c. This matter will have to come before my Finance Committee to finally decide whether we shall accept these terms if the Surveyor of Taxes and Local Commissioners agree. To illustrate how inconsistently Surveyors of Taxes act with different boroughs, I may state that just now the official in Reading says he will only allow the Treasurer depreciation at the rate of 4 per cent. on the Buildings, Plant, Machinery, Rolling Stock, Overhead Work, Cables, &c., and refuses to allow anything for depreciation of the permanent way for the reason previously quoted. In reply to his application to me for advice, I have told him of the Manchester decision. This matter is in the hands of the Local Commissioners, from whose decision there is no appeal. As to our claim *now under appeal* that the taxable interest on all debts is covered by the taxation of our profits, which is the greater of the two, we are hoping that this matter will be adjourned until the Leeds case has been settled in the High Court, or in the House of Lords. We claim to treat the whole corporation undertakings and funds as one entity, both in reference to income-tax on our loan interest and also on our bank interest.

#### *Depreciation.*

I wish to deal with this matter very cursorily, as your Ex-President gave you such an excellent paper dealing with this subject exclusively. You are aware that for some time in order to get Sinking Fund allowed as depreciation, I have urged that the lesser should be merged in the greater, and that Sinking Fund should be paid out of the amount provided for depreciation, but if the Leeds case succeeds, then the need for this will no longer exist, as in most boroughs the interest charged on the loan debt exceeds the taxed profits of the undertakings, and I fear this will be the same in Bolton in a few years.

#### *Internal Audit.*

This matter is a very important one, and since our late Secretary (Mr. Collins) wrote his book on the subject, you have been provided with an excellent *vade mecum*. I may say that in Bolton, instead of increasing the staff to cope with the heavy amount of work which this entails, our Council decided to increase the stipend of the professional auditor, and to throw the duty upon him of conducting a continuous internal audit by a professional man independent of any corporation official. I am inclined from our recent experience to hold that this is the more correct, independent, and satisfactory mode of dealing with the matter. I know that in giving this opinion I shall open myself to heavy criticism by many of my brother Treasurers, but a Treasurer's time can be very much better employed in studying the interests of their corporations on



the higher plane of accountancy, &c., as many of us have continuous problems of banking now thrust upon us.

An animated discussion followed the reading of this paper, ranging over such points as columnar systems, the value of internal audits, income-tax, &c., Mr. Swainson answering the various points raised. He also offered after the meeting to allow the members to inspect the whole of the Bolton Corporation Books, &c., to see in detail the system in operation.

A very hearty vote of thanks, carried with applause, was given to Mr. Swainson for his interesting paper, and a similar compliment was paid to Mr. Grundy for his services in the chair.

The meeting then concluded, after which the members had tea together.

## Should the Practice of Public Accounting be Limited to Certified Public Accountants?

By J. S. M. GOODLOE.

(From *The Journal of Accountancy*.)

THE growth of the practice of public accountancy in the United States within the past ten years has resulted in legislation in the States of New York, Pennsylvania, Maryland, California, Illinois, Washington, New Jersey, and Michigan, the avowed object of which is to regulate, to some extent, the practice of professional public accountants, and authorise the title or degree of Certified Public Accountant. Legislation on similar lines has been attempted in other States, but at this time the States named are the only ones which have placed a "C.P.A." law on the statute books.

The intention and general purposes of the laws of the different States are in the main identical, although they differ in many minor details. In the States of New York and Illinois the authority to practise as a Certified Public Accountant is conferred by the State University, while in the other States named such power is vested in a "State Board of Accountancy." The statutes of the several States vary as to the admission as Certified Public Accountants of accountants from other States; the Illinois law provides that the C.P.A. of any State may practise as such in the State of Illinois; the New Jersey and Michigan statutes provide for the waiver of examination and the issue to or registration of the certificate of a C.P.A. from another State, provided that such other State accords a similar privilege to the C.P.A. from New Jersey and Michigan. A proposed amendment to the Maryland law provides for the registration of the certificate of the C.P.A. from other States on payment of the same fee as is required for examination of and issue of the

Maryland certificate, but New York, Pennsylvania, California, and Washington make no provision for the practice within their borders of Certified Public Accountants from other States.

In none of the States which have enacted C.P.A. legislation is the practice of accounting limited to Certified Public Accountants, nor is there anything in any C.P.A. law so far enacted which in any way "regulates" the practice of accounting, other than by the creation of the degree or title of "Certified Public Accountant," although in several States (notably in Maryland and Illinois) the title of the legislative Act states that the Bill is "to regulate the practice of the profession of public accountants."

Nothing can be considered as "regulating" any profession which permits the practice of such profession by persons other than those registered or certified in accordance with the statutes. Nearly all, if not all, of the States "regulate" the practice of law and medicine, but I believe that few, if any, States permit the practice of either law or medicine by any person or persons other than those admitted to practice by the proper authorities.

Many States provide for the examination and registration of veterinary surgeons and other trades or professions before permitting practice; in at least one State (Ohio) the statutes provide (House Bill No. 478, passed May 9 1902) that "it shall be unlawful for any person to be engaged 'in, or working at the business of a horse-shoer, exclusively in this State without having first received a licence 'to do so, as hereinafter provided.'"

The "Horse-shoers' Bill," the first section of which is quoted above, "regulates" the work of horse-shoers; but, at this time, there is no State in this country which regulates the practice of public accountants to the extent of specifying that *all accountants in practice must prove their qualifications before being admitted to practice.*

We must admit without question the value of legislation limiting the practice of medicine, law, veterinary, &c., as protecting life and property. The services of professional public accountants have become a necessity to the business world of to-day, and the statutes regulating the practice of accounting should restrict such practice to accountants of known integrity and good character, who have proved their fitness and ability to be trusted in matters requiring ability and technical knowledge.

The C.P.A. Bill introduced at the last session of the Ohio Legislature (January 1904) contained a clause providing that "no person shall practise as a public accountant 'within the State of Ohio who has not received from 'The 'State Board of Accountancy' a certificate as to his qualifications, &c.'" The proposed Ohio Bill provided for the issue of certificates by examination; by waiver of examination of the accountant residing in or doing business within the State who has had at least three years' experience as a public accountant, at least one year of which immediately preceding the passage of the Act shall have been within the State of Ohio. The Bill also provided for the waiver of examination of and issue of certificate to any accountant who holds a valid and unrevoked certificate

issued by or under the authority of any other State or nation, provided that the standard of proficiency and character under which such certificate was issued be equivalent to that of Ohio. The proposed Ohio Bill was lost in the Senate by lack of one vote of a constitutional majority.

The power of the State to regulate the practice of any profession has been passed upon by the Supreme Court of Ohio in the case of—

*France v. State* (1897, 57 O. St. I.).

The Supreme Court sustained the statutes regulating the practice of medicine, part of the decision reading as follows:—

"It is competent for the State under its power to provide for the welfare of its people, to establish needful regulations, and impose reasonable conditions, calculated to insure proper qualifications, both with respect to learning and moral integrity, of persons desiring to engage in the practice of medicine in the State, and require compliance therewith by such persons before they shall be permitted to practise within the State."

Judge Williams said (at page 19) that—

"The powers of the Board bear a close analogy to those of boards of public examiners, who are authorised to grant certificates to teach the public schools to applicants who are found on examination to possess the necessary qualifications and furnish satisfactory evidence of good moral character. . . . The medical board is but an agency to insure the effective execution of the law designed for the promotion of the public health and welfare. The purpose of the statute undoubtedly is, by enforcing the requirements it has prescribed for the admission of persons to the practice of medicine in the State, to prevent those from engaging in the practice of that profession who, from lack of proper knowledge or want of moral rectitude, are unfit to be entrusted with its important and responsible duties. The power to pass upon the qualifications required must necessarily be committed to some board or body other than the Legislature, and may be, not inaptly, characterised as administrative."

On April 21 1896 (92 Ohio Laws 263), the General Assembly passed a statute entitled:—

"An Act to Promote the Public Health and Regulate the Sanitary Construction of House Draining and Plumbing."

This statute was declared constitutional by the Supreme Court in

*State v. Gardner* (1898, 58 O. St. 599).

The first proposition of the syllabus is as follows:—

"The right of labour and enjoy the rights thereof is a natural right which may not be unreasonably interfered with by legislation. Where, however, the certain concerns, in a direct manner, the public health and welfare, and is of such a character as to require a special course of training, or experience, to qualify

one to pursue such occupation with safety to the public interests, it is within the competency of the General Assembly to enact reasonable regulations to protect the public against evil which may result from incapacity and ignorance."

In a lecture recently delivered before the School of Accounts and Finance of the University of Pennsylvania by Mr. Charles N. Vollum, C.P.A. (Pennsylvania), reference is made to a Bill pending in the Pennsylvania Legislature providing for the certification by a Certified Public Accountant of all financial statements issued by all corporations doing business in that State, whether domestic or foreign. This Bill makes the employment of a Certified Public Accountant mandatory on corporations, and also provides severe punishment by fine or imprisonment—or both—for the certification by the accountant of a false or misleading statement.

The passage of the Acts referred to in Ohio and Pennsylvania will regulate the practice of public accountants in those States to an extent which will protect both the public and the responsible and competent accountant from the dishonest and incompetent person who professes to be an accountant, but whose lack of ability, integrity, or responsibility renders him unfit to be a member of a profession whose greatest value lies in absolute and unquestioned veracity.

In a recent lecture the Secretary of the American Association of Public Accountants, Mr. A. Lowes Dickinson, refers to the necessity of limiting the practice of accounting to Certified Public Accountants in the following words:—"The Acts here shortly summarised represent the 'best which the profession has yet been able to secure, but 'all are defective in two most important particulars. In 'the first place, none of them calls for any practical experience as a necessary qualification for the degree; and, 'secondly, they make no attempt to regulate the profession, or even, with the exception of New Jersey, to 'control the resident holders of certificates granted by 'other States. . . . The other defect noted is of even 'greater importance to the profession. All States except 'Illinois and New Jersey merely prohibit the use of the 'term 'Certified Public Accountant' by those who have 'not obtained the degree in the State. This means that the 'holders of a degree of another State must add the name 'of that State after the words 'Certified Public Accountant.' Illinois throws the door wide open to all those 'holding a similar degree from another State."

The certificate of an accountant as to the financial condition or earning capacity of a corporation whose securities are offered to the public must have weight with many persons to whom the accountant is personally unknown. It is a matter of congratulation to the members of the profession that the letters C.P.A. or C.A. have great value when following the signature attached to a statement of financial condition, or net profits.

Such statements are submitted to the public for the purpose of securing subscriptions to the securities of corporations, or for the purpose of advising stockholders, bond-

holders, creditors, &c., as to the condition of properties in which they are financially interested. It is important, therefore, that when such statements are certified by a public accountant that the investing public be protected against incompetency and irresponsibility, by limiting accountancy practice to such persons as have satisfied the proper authorities as to their integrity and ability to properly perform their duties.

It is undoubtedly true, in such States as now have a C.P.A. law, that the standing of the Certified Public Accountant is, as a rule, far above that of the accountant who has not received the C.P.A. degree.

The physician, attorney, veterinary, &c., who is guilty of malpractice, may, under existing statutes, be debarred from future practice; not so, however, with the accountant. He, if his sins of omission or commission be flagrant, may be deprived of his right to practise as a "Certified Public Accountant," but in no State is there any statute which will prevent his continuing in practice as a "public accountant," nor is there any statute in effect which prevents any person, no matter how ignorant or incompetent, from calling himself a "public accountant," and practising as such.

Moreover, there are, we regret to say, persons calling themselves accountants who are not adverse to making false statements as to financial matters—at the request of the management, or for the purpose of misleading the stockholders—if by the making of such false statements their fee be increased. Under a statute which regulates the practice of accounting in fact as well as in name, such a person should be not only barred from future practice, but should be subject to civil and criminal action.

It is not the intention of the writer to belittle the C.P.A. laws now in force. They have materially aided the cause of the competent and honest accountant, as well as the cause of the client, but the real objects of the C.P.A. legislation will not be attained until such existing C.P.A. laws are amended so as to bring all public accountants under their provisions by requiring every practising public accountant to qualify as a Certified Public Accountant.

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## Auditing in the Desert of Tarapacá.

By W. I. KIRKCALDIE, C.A.

(From *The Business Man's Magazine*.)

VERY often the professional accountant finds his business takes him into curious parts of the world, but I venture to doubt whether there is any place where a firm of Chartered Accountants carries on business under similar conditions to those which prevail in the desert of Tarapacá. The province of Tarapacá is situated in the north of Chile, and is only known to the outside world as the headquarters of the nitrate industry. In no part of the

world, excepting the arid parts of Chile, is nitrate of soda worked on a commercial basis. In the northern provinces of Chile there are large deposits of the raw mineral, and many millions of dollars are invested, and thousands of men employed in the manufacturing of the substance known as nitrate. It is perhaps superfluous to mention that the chief uses of the nitrate are in the making up of artificial manures, and also explosives. Large quantities are shipped annually to all parts of the world, and of recent years large profits have been made by those engaged in this business.

A general idea of that part of the world forming the subject of this article may be interesting.

The two provinces of Tarapacá and Atacama are situated between the Cordillera of the Andes and the Pacific ocean, and have the special peculiarity of entire absence of rain, wind, and cold.

The impression which a visitor receives is that of a dry waste of sand and rocks, stretching for thousands of square miles. There is absolutely no animal or vegetable life, with the exception of a species of vulture, an occasional condor, and flies by the million.

Iquique, which is the seaport of Tarapacá, is situated on a sandbank between the pampa and the ocean. There is only a small space between the shore and the pampa, which latter rises suddenly to a height of 3,000 feet, and shuts in the town. A railway is the chief means of communication with the interior, and as the traveller to the pampa watches the panorama which unfolds as the train climbs up the face of the cliff, it is borne in upon him that here is a country which somehow must have been overlooked when the creation was taking place. With the single exceptions of light and air, there is nothing in the whole place which is necessary for life. Everything has to be imported, and as a consequence living is expensive, and life artificial.

The various nitrate works—or oficinas—are mostly situated some 20 or 30 miles from the coast, and as the train proceeds over the desert these oficinas are seen dotted here and there at intervals of a few miles.

The first and most unusual feature which strikes an auditor from Europe on his arrival in Tarapacá is the fact that he has perforce to live with and accept the hospitality of those for whom he is working. There are scarcely any hotels, and those there are are bad. Our firm have a large connection amongst the English companies in the province, and we so arrange matters that the audits are kept up-to-date, so as to prevent a congestion of work at the end of the year. It is no uncommon thing for my partners and myself to spend months at a time on the pampa, during which period we seldom sleep for more than two consecutive nights under the same roof.

The train service is bad, and in order to get around it is often necessary to ride 20 odd miles to a neighbouring oficina.

The oficinas themselves are in reality small villages, as, owing to the isolation and lack of any large centres, each oficina has to be self-supporting. What this may mean when there are from 750 to 1,500 souls employed may be understood.

The administration houses and offices are in many cases very comfortable, and the auditor meets generally with much kindness and hospitality during his visit. In several instances the whole of the fittings of the oficina have been imported from Europe, and everything is done to help to make the employees comfortable. This is quite necessary, as the general mode of life is unattractive, and it is sound policy to try to make the best of the circumstances.

The actual manufacture of nitrate of soda is a more or less simple process. The raw material, or caliche, is found at depths of from three to ten feet below the surface of the ground. This is carted to the oficina works, and is there crushed to a small size. After this it is thrown into large boiling tanks, and is then boiled for some hours, until the nitrate has dissolved. The solution is then run off into cooling tanks, or bateas, and allowed to cool down. After a few days all the nitrate has become precipitated, and the surface water is drawn off, leaving only the nitrate. This is then thrown into drying yards, or canchas, and is turned over in the sun until the greater part of the moisture has been evaporated. It only remains to put the nitrate into bags and send it down to the port for shipment.

As regards the Bookkeeping Department, there is a very good system in vogue, which appears to meet the circumstances of the peculiar business conditions. It must be borne in mind that nearly all the companies are owned out of Chile, and it therefore is necessary to keep the books in such a way that the head offices in Europe may have full details furnished to them. As it would be obviously impossible to send home the subsidiary books, it has been found advisable to incorporate all these into a Journal, copies of which book are sent home monthly. The books are kept on the Department System, and the cost is worked out very clearly on each stage of the preparing of the raw material, and as the auditor can keep a close check on, and compare the different expenses in the various oficinas, the work of an audit is most satisfactory and complete. Each half-year we write a detailed report upon every item appearing in the Balance Sheet, and the board of directors at home are thus given such explanations as may be necessary. The conception of a Chartered Accountant's business out here appears to have been that they are a species of unemployed bookkeepers who were prepared to take up

any odd work connected with books or accounts. During the past few years, however, our profession has vindicated its right in Chile to be called such, and to-day our firm has as good a reputation and as large a connection as the majority in London.

Besides working in Iquique we have our head office in Valparaiso, and in nearly every port between these two places we have work to do.

The nitrate companies and the nitrate industry provide a combination of circumstances which have to be experienced to be realised, but otherwise work goes on much as it does in such businesses in London.

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## Company Law Decisions in 1905.

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THE following summary of the more important company law decisions in 1905 is reproduced from *The Financial Times* :—

*Share Certificate Forged by Secretary.*—The articles of association of a company directed that the certificates of title to shares in the company should be issued under the seal of the company and signed by two directors, and countersigned by the secretary. The secretary, in order to procure a loan for his own purposes, gave as security to the plaintiffs a document purporting to be a certificate for 5,000 shares in favour of certain nominees of the plaintiffs. This document appeared to be regular on the face of it, being apparently sealed with the seal of the company, signed by two directors, and countersigned by the secretary; but, in fact, the seal had been affixed without authority and the signatures of the two directors had been forged by the secretary. On the faith of this document the plaintiffs procured from their nominees and advanced to the secretary the sum of £20,000. They then applied to have their nominees registered as holders of 5,000 shares. The company, having discovered the fraud of the secretary, refused to register the nominees of the plaintiffs. In an action to recover damages for the refusal, it was held that the company were not estopped from denying the plaintiffs' title to £5,000 shares, and from refusing to register the nominees of the plaintiffs, inasmuch as the actual scope of the secretary's authority did not cover any acts other than those of a purely ministerial character, such as bringing the certificate before the directors for signature and appending the seal of the company in their presence (*Ruben v. Great Fingall Consolidated, Lim.*, 53 W.R. 100).

*Borrowing on Certificates.*—On April 19th 1904 B. became the registered owner of shares in the defendant company, and certificates of his ownership were made out, but were not sent to him. On the same day a transfer by B. to H. and M. of 1,500 shares was presented to the secretary of the

company, and the secretary endorsed upon it a certification certifying that the certificates had been forwarded to the company's officer, and the transfer so certified was returned to H. and M., and they then executed it, and had since become the registered owners of the shares. On 22nd April the secretary, having occasion to send B. certificates for other shares in the company, by mistake enclosed the certificates for the 1,500 shares which had been transferred to H. and M. Subsequently the plaintiffs made advances to B. on a deposit of the certificates for the 1,500 shares with transfers of the shares. The loans not being repaid, the plaintiffs sent in the transfers to the company for registration. Finding that they were unable to obtain registration, they brought the action for registration of the transfers and delivery of the certificates and damages. They based their claim on estoppel arising from the negligence of the secretary in returning the certificates to B. after the certification. The Court of Appeal held that, admitting that there was negligence for which the company might have been liable to those who were entitled to rely on the certification, the plaintiffs were not persons who could rely on it, and they had failed to show that there was any duty on the part of the company to retain the certificates, either to them personally or to the public, or to any section of the public, or to persons desirous of becoming members of the company; under Section 31 of the Companies Act, 1862, a certificate was only *prima facie* evidence of title to shares, and the plaintiffs were not entitled to assume as against the company, without inquiry, that there had been no dealing with the shares since the issue of the certificates to B. from the mere fact of finding them in his possession; further, the negligence was not the real or proximate cause of the plaintiffs' loss, but the improper use of the certificates made by B. after they were returned to him, and mere negligence would not raise estoppel. The circumstances, therefore, were not sufficient to raise a case of estoppel against the company. The secretary of the company, on receipt from the plaintiffs of the transfers to them, gave an acknowledgment of the receipt of them for registration in favour of the transferees, "subject to the approval of the directors," with a note appended that the receipt must be returned to the company's office in exchange for the relative share certificates, which would be ready on a day named. The Court of Appeal held that the receipts were not a recognition on behalf of the company of the plaintiffs' title, and did not bind the company to issue certificates on the day named (*Longman v. Bath Electric Tramways*, 1905, 1 Ch. 646).

**Forged Deed of Transfer.**—When a person is requested to discharge a statutory duty by and for the benefit of another a contract is implied on the part of the latter to indemnify the former from the consequences of his act. Thus, where a corporation registers a transfer of its stock, apparently valid but in reality forged, and the corporation has been

compelled to make good the loss to the true owner of the stock, it is entitled to recover the loss sustained from the person at whose request the forged transfer was registered (*Sheffield Corporation v. Barclay*, 93 L.T. 83 House of Lords).

**Note on a Certificate.**—C., the registered holder of shares in the defendant company, in May 1903 deposited the certificate for the shares with the plaintiff as security for a loan, and executed a transfer to the plaintiff with the date left in blank. There was a note at the foot of the certificate, "Without the production of this certificate no transfer of the shares mentioned therein can be registered." C., who was in the employment of the company in June 1903, entered into an arrangement with the managing director and two of the officers of the company for an advance to be made to him by the company, part of the arrangement being that he should sell his shares in the company, and that the proceeds of sale should be paid to the company in part repayment of the loan. C. sold his shares to Y. for £90, and the money was paid by Y. to the company. C. lodged a transfer of the shares to Y. with the company for registration without the certificate but with a declaration that the certificate was held by a friend of his, but not "as a charge against any loan or other consideration." C. was trusted by the directors, and they, acting in good faith, accepted his statement and registered the transfer to Y. and issued a new certificate to him. The Court of Appeal held, on the facts, that the company had received the £90 with such knowledge and under such circumstances that they ought to be treated as having received it to the use of the plaintiff, and the plaintiff was entitled to recover it from the company (*Rainford v. James Keith and Bluckman and Company*, 1905, 2 Ch. 147).

**Minimum Subscription for an Issue.**—In response to the issue of a prospectus the company received applications for the full amount of the minimum subscription named, accompanied by cheques for the application money, and it went to allotment. At the time of allotment a considerable number of the cheques sent for the application money had not been credited to the company's banking account, and certain of those cheques were after the allotment dishonoured. The Court of Appeal held that the sum payable on application for the amount fixed by the prospectus as the minimum subscription had "not been paid to and received by the company" within the meaning of Subsection 1 of Section 4 of the Companies Act, 1900, and the allotment was voidable. The contention of Subsection 1 of Section 4 is that no allotment should be made until the company has actually received payment of the application money, and if cheques are sent with the applications they ought to be cleared before an allotment is made (*Mears v. Western Canada Pulp and Paper Company*, 93 L.T. 150).

**Irregular Allotment.**—An allotment of shares made by the directors of a company before the minimum subscription is

obtained is voidable, not void. If, owing to the fact of the company having been registered before the passing of the Companies Act, 1900, the time limit fixed under Section 5 by reference to the statutory meeting is inapplicable, the shareholder may rescind his contract to take the shares at any time before he has affirmed it expressly or by conduct. An allotment by directors in contravention of Section 4 is not *ultra vires*, but is simply a breach of a statutory duty for which the shareholder has his legal remedy. The Court will not, therefore, interfere by injunction to restrain the directors from proceeding with the allotment (*Finance and Issue, Lim. v. Canadian Produce Corporation*, 1905, 1 Ch. 37).

**Forfeited Shares.**—A limited company forfeited shares for non-payment by the holders of a call for the full amount remaining unpaid thereon. The company sold the shares to purchasers, the contract of sale providing that the shares were to be deemed discharged from all prior calls. Subsequently the forfeiting holders paid a portion of the call. The company having gone into liquidation, the liquidator endeavoured to recover from the purchasers the full amount of the call. It was held that the liquidator was not entitled to receive the amount of the call twice over, and that the purchasers must be allowed the benefit of the payment made by the forfeiting holders in respect of the shares (*In re Randt Gold Mining Company*, 20 T.L.R. 419).

**Two Meetings Convened on One Notice.**—A provision in the articles of association of a company that whenever it is intended to pass a special resolution the two meetings may be convened by one and the same notice, and it shall be no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting, it is not *ultra vires* or inconsistent with the letter or the spirit of Section 11 of the Companies Act, 1862, and a notice given in conformity with this provision would be a valid notice, and the second meeting summoned by it would be duly summoned (*In re North of England Steamship Company*, 1905, 2 Ch. 15).

**Voting Qualification of Proxy.**—Although by one of the articles of association of a company no person is to be allowed to vote as a proxy unless the instrument appointing him is deposited as therein prescribed before "the meeting" "at which the person named in such instrument proposes "to vote," it is not necessary that the proposed proxy should actually be "named" if he is sufficiently described for all business purposes. An article requiring that no person shall be appointed as proxy "who is not a shareholder in the company" is sufficiently complied with if he is a shareholder at the time when he is called upon to act as a proxy, though he was not a shareholder at the date of the appointment (*Bombay-Burmah Trading Corporation v. Shroff*, 1905, A.C. 213).

**Fully-paid Shares as a Purchase Consideration.**—A company,

called the vendor company, sold a mining property to a limited company called the Great Central Company, in consideration of fully-paid shares in the Great Central Company. A person acting with the authority of both companies entered into an agreement with the defendant Chapman, whereby the latter agreed to take 5,000 £1 shares in the Great Central Company at the price of £5,000, and, in addition, he was to have a transfer from the vendor company of 15,000 fully-paid shares in the Great Central Company, being part of the shares belonging to the vendor company as the purchase price of the mine. It was held by the Privy Council that this was not an issue of shares by the Great Central Company at a discount, and the transaction was valid (*Chapman v. Great Central Freshold Mines*, 22 T.L.R. 90).

**Registration of Shares.**—By one of the articles of association of a company, "the directors may decline to register "any transfer of shares upon which the company has a "lien, and in case of shares not fully paid up, may refuse "to register a transfer to a transferee of whom they do not "approve." The defendant, who was the registered holder of partly-paid shares in a company, executed a transfer of them, and the transfer was lodged with the secretary, who at once entered the name of the transferee on the register. The transfer came subsequently before the directors, who, acting under the above article, refused to pass it, and the secretary struck the name of the transferee out of the register. The directors afterwards made a call upon the shares. In an action to recover the calls, the secretary in his evidence stated that he had no authority to pass transfers, and that he made the entry in the register merely in order to keep pace with the work, and that the directors had never before refused to sanction a transfer. It was held that the secretary had no authority to enter the transfers at once, and that, therefore, the defendant remained the registered holder of the shares, and was liable for calls (*Chida Mines v. Anderson*, 22 T.L.R. 27).

**Bankrupt Shareholder and his Shares.**—A shareholder in a limited company was adjudicated bankrupt. The shares were partly paid, and the company proved in the bankruptcy for the amount uncalled upon the shares, and received a dividend in respect thereof. The company subsequently went into voluntary liquidation, and after satisfying all its liabilities it had surplus assets for distribution among its shareholders. The trustee in bankruptcy of the bankrupt shareholder asked for a declaration that his shares should be treated as fully-paid for the purpose of any distribution of assets. The Court of Appeal held that, as the trustee had not paid the full amount on the shares, he was not entitled to the declaration (*In re West Coast Goldfields*, 22 T.L.R. 39).

**Borrowing for Unauthorised Purposes.**—Where a company borrows money within the limits of its powers of borrowing,

the lender is under no obligation to inquire for what purposes the borrowing is made, or whether the money is to be applied for objects within the powers of the borrowing company. Where a director of a lending company has in his private capacity acquired knowledge as to the purposes to which a borrowing company intends to apply money borrowed by them upon the security of a debenture, there is no duty on the director to disclose that knowledge to the lending company, and such knowledge will not be imputed to them so as to avoid the debenture if the purposes are improper and *ultra vires* (*In re Payne & Co. ; Young v. Payne & Co.*, 73 L.J. Ch. 849).

*Floating Charge and Jeopardy.*—Where a company has issued debentures giving a floating charge on its present and future property, the debenture-holders are entitled to the appointment of a receiver on the sole ground of jeopardy to the security, even although nothing may be due and presently payable to the debenture-holders. The fact that the creditor has issued a writ and signed judgment, and is in a position to issue execution, may constitute jeopardy. Persons supplying such a company with goods have an expectation of being paid only when such payment would be in the ordinary course of business. This expectation is intercepted when a receiver is appointed, but even before the appointment those creditors, as between themselves and the debenture-holders, have no right to enforce payment of their debts in priority to the latter (*In re London Pressed Hinge Company*, 1905, 1 Ch. 576).

*Mortgage of Book Debts.*—A mortgage of the book debts, present and future, of a company (but not including uncalled capital), by which the mortgagees were empowered, but were under no obligation, to give notice to the debtors, and on such notice to receive the debts or appoint a receiver thereof, and on default of the mortgagors to exercise their power of sale, was held by the House of Lords to be a "floating charge" within the meaning of Section 14, Subsection 1 (d), of the Companies Act, 1900 (*Illingworth v. Houldsworth*, 20 T.L.R. 633).

*Receiver for Debenture-holders.*—A receiver was appointed by debenture-holders under a power conferred by the debentures. The receiver was authorised by the terms of the debentures *inter alia* to take possession of the property charged by the debentures; to carry on or concur in carrying on the business of the company; and to make any arrangement or compromise which he should think expedient in the interests of the debenture-holders. It was held that, for the purpose of carrying on the business of the company, the receiver might first create a valid charge on property comprised in the debentures to have priority over the charge of the debenture-holders; and secondly, pledge the personal credit of the debenture-holders (*Robinson Printing Company v. "Chic," Lim.*, 1905, 2 Ch. 123).

*Realisation of Security covered by Debentures.*—A company's debenture trust deed provided that money arising from realisation of securities should be applied in payment first of arrears of interest on debentures, and secondly of principal. By a judgment in a debenture-holders' action it was declared that the trusts of the deed ought to be carried into effect, and the usual accounts and inquiries were directed. The order on further consideration was made on the footing of the assets being insufficient, and ceased to continue an account distinguishing between capital and income. By a subsequent order of 15th June 1896 the trustees were authorised to pay the balance of interest to a date found by the chief clerk's certificate (on which income-tax was duly paid), and out of any surplus to pay a dividend of 1 per cent. on account of what was due on the debentures, and by an order of 21st July 1897, and by subsequent similar orders, the trustees were authorised to pay further dividends on account generally of what was due on the debentures for principal and interest. Realisation was almost completed, and the past payments made under the above orders, together with any further sum which might be available if applied solely in discharge of principal, would not be sufficient to pay the principal in full. The Crown claimed income-tax on the dividend of 1 per cent. under the order of 15th June 1896, and on all subsequent dividends paid on account generally. It was held by the Court of Appeal that, according to the true meaning of the orders, and having regard to the insufficiency of the assets, these payments ought not to be governed by the order of payment prescribed by the trust deed, but ought now to be attributed to principal, and that income-tax was not therefore payable in respect of any part of such payments (*Smith v. Law Guarantee and Trust Society*, 20 T.L.R. 789).

*Debentures obtained by Misrepresentation.*—Debentures obtained from a company by misrepresentation were, after the company had gone into voluntary liquidation, transferred for value to a person having no notice that the transferor's title was open to dispute. The transferee gave notice of the transfer to the liquidator, but did not demand registration. The debentures contained a covenant for payment by the company to the registered holder; and endorsed conditions provided that the registered holder or his personal representative would be regarded as exclusively entitled to the benefit, that a transfer would be registered on delivery at the registered office of the company with the prescribed fee and evidence of title or identity, and that the principal and interest would be paid without regard to equities between the company and the original or any intermediate holder, and the receipt of the registered holder should be a good discharge. It was held that the transferee was not entitled to hold the debentures free from equities between the company and the transferor. It seems, even if the transferee had demanded registration, the company would have been entitled to enforce

its equities. Conditions such as those endorsed are only a protection to the transferee when he has been placed upon the register (*In re Palmer's Decoration and Furnishing Company*, 53 W.R. 142).

**Winding-up—Sale of Undertaking.**—Where the memorandum of association of a railway company incorporated under the Companies Acts, 1862 to 1882, and not governed by the Companies Clauses Acts, enables it to borrow money by the issue of debenture stock, and the articles of association provide that the board may issue such stock as redeemable or irredeemable, debenture stock issued as irredeemable is nevertheless redeemable at par on the winding-up of the company. Articles of association can be read for the purpose of explaining the memorandum in respect of a matter which need not appear in the latter. For example, the borrowing of money by a railway company—but not for the purpose of showing that borrowing means the granting of perpetual annuities, for that is not borrowing, nor is it a purpose subsidiary to the general objects of such a company (*In re Southern Brazilian Rio Grande do Sul Railway*, 1905, 2 Ch. 78).

**Re-issuing Debentures.**—A company issued a series of debentures to rank *pari passu* as a first charge, the company not to be at liberty to create any mortgage or charge on the security in priority to or *pari passu* with those debentures. Certain of the debentures having been issued as security for loans were, on repayment of the loans, returned to the company with blank transfers. These debentures were subsequently assigned to fresh holders for value by completing the transfers. It was held by the Court of Appeal that on payment off of the loans for which they were issued as security the debentures were paid off, and that the holders of these debentures could not rank *pari passu* with the other debenture-holders (*In re Tasker & Sons, Lim.*, 74 L.J. Ch. 283).

**Purchase by a Company of its own Debentures.**—The effect of a company purchasing its own debentures is to extinguish the debt, for the company cannot be at the same time both mortgagor and mortgagee of its own property. Where, therefore, a company had taken transfers to itself of its own debentures, and had registered them in its own name, and had afterwards resold the debentures, the purchasers were held to have acquired no right to share with the other debenture-holders of the same series in the distribution of the proceeds of the security (*In re Routledge & Sons, Lim.*, 53 W.R. 44).

**Transfer of Debentures to Trustees.**—Where debentures, the conditions of each of which were that the moneys thereby secured were to be paid without regard to any equities between the company and the original or any intermediate holder, and that the registered holder was to be treated as exclusively entitled to the benefit of the debenture, and that the company was not bound to enter on the register notice

of any trust, or to recognise any right in any person, were by deed assigned, by persons who were indebted to the company to a trustee for creditors, and the trustee was entered on the register as the holder of the debentures, and neither the company nor the other debenture-holders had come in under the deed, it was held by the Court of Appeal that the trustee, being simply general assignee in trust for creditors, took the debentures subject to the same equities as his assignors were subject to, and that consequently, notwithstanding the conditions on the debentures, he was not entitled to share in a fund in Court in a debenture-holder's action, which was available for dividend, without bringing into account the debt due to the company by his transferors (*In re Brown & Gregory, Lim.*, 11 Mans. 402).

**Priority of Receiver's Expenses.**—A company issued debentures, which gave a floating charge upon its undertaking and property. A receiver and manager was appointed in a debenture-holder's action, and orders were made in the action, giving the receiver liberty to borrow money for the purpose of preserving the property of the company comprised in the debentures, the moneys so borrowed to be a first charge on such property. The moneys were advanced by the plaintiffs in the debenture-holder's action, and on each advance the receiver executed a deed in favour of the plaintiffs giving them a first charge upon the property and declaring that he should not be personally liable to repay the advance out of his own moneys. The company's assets eventually proved insufficient to repay the advances after payment of the expenses of receivership and management. It was held by the Court of Appeal that the expenses of receivership and management had priority over the charges given to the plaintiffs for the sums advanced by them (*In re Glasdir Copper Mines*, 22 T.L.R. 100).

**Income Tax.**—A company registered in England purchased nitrate grounds abroad, which contained large quantities of "caliche," which was the raw material from which nitrate was produced. The caliche was dug up from the surface of the land and taken to manufacturing works, where the nitrates were extracted. The exact amount of caliche used by the company in any year could be ascertained without difficulty. In assessing the profits of the company to income-tax under Schedule D of the Income Tax Acts, the company claimed a deduction in respect of the cost of the raw material "caliche," as being a disbursement or expense for the purposes of their trade. It was held by the House of Lords that the caliche represented capital of the company, and that a deduction was allowable for capital expenditure (*The Alianza Company v. Bell*, 22 T.L.R. 94).

**Dividends and Income Tax.**—By Section 16 of the Ashton Gas Company's Act the profits of the company to be divided among the shareholders in any year were not to



exceed 10 per cent. per annum on the ordinary capital of the company. It was held by the House of Lords that the dividend to be paid in any year to the shareholders ought to be calculated as including, and not excluding, the income-tax thereon (*Ashton Gas Company v. Attorney-General*, 22 T.L.R. 82).

*Scope of a Garnishee Order.*—A garnishee order does not operate as a charge upon the goods in the hands of the garnishee. The plaintiff recovered judgment for a debt against the defendants. At that date the defendants, a firm, were in process of assigning the goodwill of their business and all their assets to a limited company T. & Co., which had recently been incorporated and registered under the Companies Acts. Six months later T. & Co. were indebted to the defendants in a sum of money, and the plaintiff obtained under Order XLV., R. 1, a garnishee order absolute attaching debts due from the company to the defendants. The garnishees subsequently borrowed *bond fide* a sum of money from W., and issued to him a debenture covering all their assets and property to secure repayment of the loan. Executions against the garnishees were then put in by the garnishor, and the Sheriff having seized goods of the garnishees, W., appointed a receiver and claimed the goods under his debenture. It was held that this debentureholder, in respect of the goods, was entitled to priority over the garnishee issuing execution under his garnishee order (*Geisse v. Taylor*, 74 L.J. K.B. 912).

*Loans to a Company's Servant.*—The directors of a company had power by the articles to lend money, and generally undertake such other financial operations as might in their opinion be incidental or useful to the general business of the company. The Court of Appeal held that this authorised the making of a loan to a servant trusted by the company (*Rainsford v. James Keith & Blackman Co.*, 1905, 2 Ch. 147).

*Payment of Director's Travelling Expenses.*—A director of a company who is paid for his services is not entitled, in the absence of special circumstances, to be paid his expenses of travelling to and from board meetings out of the company's funds, unless such payment is authorised by the instrument which regulates the company, or by the shareholders at a properly convened meeting, and, in the absence of such authority or special circumstances, a resolution of the directors giving their travelling expenses to all the directors is bad (*Young v. Naval and Military and Civil Service Co-operative Society of South Africa*, 1905, 1 K.B. 687).

*Liability for Cost of Litigation.*—J., M., and I. were directors of a company which was being voluntarily wound up. In the course of the liquidation it appeared that cheques signed by J. and M. had been drawn against the bank account of the company for purposes in which I. alone was interested, but that on the whole account

lodgments had been made by I. to the credit of the company to an amount larger than the sums drawn out upon the cheques so signed by J. and M. On a summons by the liquidator under Section 165 of the Companies Act, 1862, to determine whether these sums had been expended *ultra vires* and in breach of trust, and, if so, that the director should repay the said sums, it was found that no money loss had been sustained by the company, but the Court decided that the directors were guilty of gross neglect and breach of duty, and that such neglect and breach of duty were the cause of the litigation, and ordered that the directors should pay the cost of the summons and inquiry. The Court of Appeal of Ireland held that the Court had power to make the order that the directors should pay the costs, although the claim of the liquidator for repayment of money had failed (*In re Ireland & Co.*, 1905, 1 Tr.R. 133).

*An Undisclosed Material Contract.*—In an action against the directors of a company for breach of the statutory obligation imposed by Section 38 of the Companies Act, 1867, to disclose in the prospectus particulars of contracts, the plaintiff must satisfy the Court that he has been damaged by the omission to disclose. The mere fact that a material contract has not been disclosed raises no presumption of law that the plaintiff was induced to take his shares by the omission, or would not have taken them if the contract had been disclosed. The plaintiff, in order to succeed, must satisfy the Court that if the omitted contract had been disclosed, he would not have applied for the shares (*Nash v. Calthorpe*, 1905, 2 Ch. 237).

*Remuneration of Trustees as Directors.*—When trustees hold shares belonging to the trust, and they are appointed directors of the company in respect of such holding, and there is no provision in the will enabling them to retain their remuneration as such directors for their own benefit, they must account for such remuneration to the trust, and the remuneration is to be treated as capital, and will go to the remaindermen as an accretion to their shares (*In re Francis*, 92 L.T. 77).

*Manager's Liability for False Statements.*—A person who in fact manages the affairs of a limited company is a manager within the meaning of Section 84 of the Larceny Act, 1861, although he may not have been appointed to the office under the Companies Act, 1862, and is therefore liable to be convicted under that section of unlawfully making, circulating and publishing written statements, false to his knowledge, with intent to induce persons to become shareholders in the company (*Rex v. Lawson*, 1905, 1 K.B. 541).

*Company's Annual Return.*—When a company neglects to send to the Registrar of Joint Stock Companies the annual return required by Section 26 of the Companies Act, 1862, as amended by Section 19 of the Companies Act, 1900, and the Registrar strikes the name of the company off the

register under Section 7, Subsection 4, of the Companies Act, 1880, as a defunct company, the Court, upon an application under Section 7, Subsection 5, of the Act of 1880 to restore the name to the register, has no power to impose a penalty as a condition of restoring the same. By Section 7, Subsection 4, of the Act of 1880, the effect of striking the name of a company off the register is to dissolve the company, but the personal liability of its officers for the engagements made as its agents is preserved, and the mere restoration of the name to the register does not relieve them from that liability. To relieve them from liability the Court must make an order under Section 7, Subsection 5 (*In re Brown Bayley's Steel Works*, 21 T.L.R. 374).

*Invalid Appointment of Director.*—A company was registered in 1897 under the Companies Act, and the following day a meeting of the subscribers to the memorandum of association was held, at which one of the subscribers was appointed a director, and he afterwards acted as such. By the articles of association of the company, Table A in Schedule 1 to the Companies Act, 1862, so far as it dealt with the appointment of the first directors, was expressly excluded, but the articles contained no provisions in substitution therefor. By the articles seven days' notice of any meeting was necessary. The person so appointed as a director assigned to the plaintiff the fees alleged to be due to him as such. It was held that as seven days' notice of the meeting was not and could not have been given, the appointment of the director was invalid, and neither he nor his assignees could sue the company for his fees or upon a *quantum meruit* for services rendered (*Woolf v. East Nigel Gold Mining Company*, 21 T.L.R. 660).

*Directors' Acceptance of Bill of Exchange.*—A bill of exchange was drawn upon a limited company in its proper name, and it was accepted by two directors for the company, the word "limited," however, being omitted in the acceptance owing to the fact that the rubber stamp by which the words of acceptance were impressed on the bill was longer than the part of the bill on which the acceptance was stamped, and therefore the word "limited" overlapped the paper. The company did not pay the bill. It was held that the name of the company was "mentioned" in the bill in accordance with Sections 41 and 42 of the Companies Act, 1862, and the two directors were not personally liable thereon (*Dermantine Co. v. Ashworth*, 21 T.L.R. 510).

*Voluntary Winding-up does not Dismiss Servants.*—The defendant agreed to serve a banking company which was registered under the Companies Act, 1862, as manager of a branch, and he agreed that he would not within a year of the termination of the agreement, either by notice or as hereinafter provided, enter into the service of or in any way act for any bank carrying on business within a radius of five miles of any branch of the bank to which he might be

appointed manager. The banking company was empowered to put an end to the agreement in the event of the defendant being guilty of misconduct. The banking company afterwards passed resolutions for voluntary winding up, and liquidators were appointed for the purpose of selling their business and goodwill to another banking company. The defendant thereupon left the company's branch bank and entered the service of another bank at the same place. The company thereupon gave him a month's notice to terminate the agreement, and brought an action to restrain him from entering the service of the other bank in breach of the agreement. It was held that the voluntary winding-up did not operate as a dismissal of the company's servants, and that, therefore, the company were entitled to the injunction claimed (*Midland Counties District Bank v. Attwood*, 21 T.L.R. 175).

*Non-Disclosure of Contracts.*—A director issued a prospectus which omitted to disclose a contract in compliance with Section 38 of the Companies Act, 1867; but at the meeting of directors at which the prospectus was approved he forgot the existence of the contract in question, although the minutes of the previous meeting at which this contract was considered were read and confirmed in his presence, and although he had himself approved the contract. He had, however, a general knowledge of the existence of contracts which might fall within the section, and he made no inquiry, but relied upon the assurance of the company's solicitor that the prospectus disclosed all contracts required to be disclosed. It was held by the House of Lords, overruling the Court of Appeal, that in the absence of evidence that the contract would have deterred the respondents from taking shares in the company if it had been specified in the prospectus, and that the respondents had sustained damage in consequence of such omission, the appellants were not liable to pay damages to the respondents (*Calthorpe v. Trechmann*; *Macleay v. Tait*, 22 T.L.R. 149).

*Contingent Notice of a Meeting.*—The articles of a company contained a provision that seven days' notice at least should be given of any meeting of the company, that if it was intended to pass a special resolution both the necessary meetings might be called by one and the same notice, and that no objection should be taken that the notice only convened the second meeting contingently on the passing of the resolution by the requisite majority at the first meeting. Meetings of the company were called in accordance with these provisions, and the resolution was passed and subsequently confirmed by the requisite majority. When, however, the special resolution came up for the sanction of the Court the Judge held that this notice of a second meeting to be held contingently upon the passing of a certain resolution by the first meeting did not comply with Section 51 of the Companies Act, 1862, which is as follows:—"Notice of any meeting shall, for the purpose of the section, be deemed

"to be duly given and the meeting to be duly held if the "notice is given and the meeting held in the manner "prescribed by the regulations of the company." On appeal, it was held that the provisions of the company's articles did not override the provisions of the Companies Act, 1862, and that the notice was validly given (*North of England Steamship Co.*, 93 L.T. 1).

**Construction of Articles of Association.**—Article 61 of the articles of association of a company incorporated under the Companies Acts provided:—"No business shall be transacted at any general meeting except the declaration of a dividend, unless there shall be personally present at the commencement of the business ten or more members." Article 130 provided:—"On the dissolution of the company the affairs of the company shall be wound up in terms of the Acts of Parliament under which the company is incorporated." It was held by the Court of Session of Scotland that at a meeting for the passing of a special resolution for the voluntary winding up of the company there must be at least ten members personally present in terms of Article 61 of the articles of association, and that it was not sufficient that the meeting satisfied the provisions of the Companies Acts as to the passing of special resolutions (*Howling's Trustees v. Smith*, 7 F. 390).

**Non-Compliance with Articles of Association.**—Testamentary trustees were, under Section 76 of the Companies Act, 1862, contributories, but not members, of a company in which the deceased held shares at the time of his death. The Court of Session of Scotland held that the trustees had a good title to challenge the validity on the ground of non-compliance with the articles of association of a special resolution of the company for voluntary liquidation and the appointment of a liquidator (*Howling's Trustees v. Smith*, 7 F. 390).

**Time Limit in a Winding-up.**—When a company went into voluntary liquidation with a view to amalgamation with another company, and it was subsequently discovered that certain assets of the old company, consisting of mining claims in the Transvaal, which were to be transferred to the new company, could not be transferred within the period of three months, at the expiration of which time the old company would, under Section 143 of the Companies Act, 1862, automatically cease to exist, and a contributory before the expiration of the three months applied under Section 138 for an order to stay the proceedings in the winding-up, the Court, exercising the power conferred upon it by Section 89 in a compulsory winding-up, made an order staying all proceedings in relation to the winding-up of the old company, with liberty to apply (*In re Eastern Investment Company*, 1905, 1 Ch. 352).

**Judgment Creditors and Debenture-holders.**—On a petition for a compulsory winding-up order by judgment creditors, it

was shown that the debenture-holders of the company had appointed a receiver of all the assets of the company. The receiver carried on the business, and incurred further liabilities. The assets were more than covered by the debentures, and it appeared that there would be no surplus assets, so that the petitioners would derive no advantage from the winding-up. It was held that it was "just and equitable" under Section 79, Subsection 5, of the Companies Act, 1862, that a winding-up order should be made (*In re Chic, Lim.*, 1905, 2 Ch. 345).

**Valid Cause for Winding-up.**—A majority in number and value of the shareholders of a company formed (a) to purchase, charter, hire or otherwise acquire steam or other ships, and to work, hire or employ them, and (b) to carry on the business of shipowners, which had lost the only vessel it possessed, and whose only remaining asset was a balance of £363 in the bank, presented a petition to have the company wound up by the Court. A minority of the shareholders desired to carry on the business as charterers, and a resolution to wind up voluntarily failed to obtain the necessary three-fourths majority. It was held that in the circumstances it was just and equitable that the company should be wound up and granted a winding-up order (*Pirie v. Stewart*, 6 F. 847).

**Liability of a Liquidator.**—Where the liquidator of a company in voluntary liquidation repudiates a claim for damages, for which an action is pending, or is brought against the company, and defends the action and the plaintiff obtains judgment with costs, the liquidator must pay the costs in full out of the assets. The liquidator's proper course would have been to apply to stay the action, when the Court, if allowing it to go on, might have done so on terms that the plaintiff should, if successful, add his costs to the damages recovered (*In re Wenborn & Co.*, 1905, 1 Ch. 413).

**Witnesses' Costs in a Winding-up.**—An examination of witnesses under Section 115 of the Companies Act, 1862, is a "proceeding in the Supreme Court" within the meaning of the Judicature Act, 1890, Section 5, and, therefore, the Court has jurisdiction to order the person procuring the examination to pay the witnesses examined under that section their costs, including the costs of being represented by solicitors and counsel, in addition to their expenses (*In re Appleton, French & Scafton, Lim.*, 1905, 1 Ch. 749).

**Rights of Depositors in a Winding-up.**—On the winding up of a company, creditors from whose course of dealing with it there can be implied a contract to pay interest are entitled to interest on admitted debts to the date of paying a final dividend, provided there are surplus assets. This is so in spite of the fact that the debt is for money deposited to secure a wagering contract. The liquidator

must distribute the assets according to the rights of the parties; therefore a receipt for final dividend, expressed to be in full discharge of all claims, is no release of a claim for interest if the liquidator knew the question was to be raised. The amount of a debt admitted to proof is the amount at the date of winding-up; therefore, if the amount has been settled by compromise under order of the Court, this does not negative a right to subsequent interest (*In re Duncan & Co.*, 92 L.T. 108).

**Security for Costs.**—A limited company against which an action has been brought does not by appealing become a plaintiff within the meaning of Section 69 of the Companies Act, 1862, so as to be required to give security for costs (*Sinclair v. Glasgow and London Contract Corporation*, 6 F. 818).

**Solicitor's Charge on Assets.**—Where a limited company is in course of being wound up and reconstructed, and there is an agreement that the future new company will pay a certain consideration to the liquidator of the old company in cash, the company's assets, purchased by the new company and retained by the liquidator, will be charged with the costs of the company's solicitor in connection with the winding-up and reconstruction, although the cash consideration is never paid, and consequently the assets of the old company are never actually transferred to the new company (*In re Clayton*, 92 L.T. 223).

**Gratuities to Servants on a Winding-up.**—A scheme prepared by a company for the application and distribution of the company's moneys, payable upon the company's undertaking, does not empower the company to pay a certain sum, part of the compensation moneys, as gratuities to those servants who had been for a certain number of years in the service of the company (*Warren v. Lambeth Waterworks*).

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## Personal.

MR. JOHN HAROLD WORTHINGTON, who was articled to Mr. STANLEY PEARSON, passed the Final Examination of the Institute of Chartered Accountants in November last, and has been assumed into the partnership of HALLIDAY, PEARSON & Co., 13 Spring Gardens, Manchester.

MR. H. E. SWEETING, Chartered Accountant, of Cardiff, has been appointed a Public Auditor under the Friendly Societies Act, 1896, and the Industrial and Provident Societies Act, 1893.

## Golf.

MR. A. R. KING FARLOW, the well-known member of the Chartered Accountants' Golf Club, was amongst the competitors in the monthly medal competition held under the auspices of the Mid-Surrey Golf Club on Saturday last. Mr. King Farlow finished 4 down to "Bogey," and tied with Mr. J. B. Dudgeon, of the Stock Exchange Golfing Society, for third place.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Jan. 19th, was 191, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 113; Deeds of Arrangement registered, 78. The respective numbers in the corresponding week of last year were: Bankruptcies, 88; Deeds of Arrangement, 76—total, 164; being an increase of 27. The total number of commercial failures recorded during the 3 weeks of the present year is 464; the total number recorded in the corresponding 3 weeks of last year was 487, showing a decrease of 23.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Jan. 19th, was 133. The number in the corresponding week of last year was 136, showing a decrease of 3. The total number filed during the 3 weeks of the present year is 383; the total number filed in the corresponding 3 weeks of last year was 427, showing a decrease of 44.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Jan. 19th, amounted to £1,282,222, by way of addition to £1,515,421, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,871,283, showing a decrease of £589,061. The total amount registered during the 3 weeks of the present year was £4,747,734 (in addition to the issues in previous years by the same companies), as compared with £5,461,492 for the corresponding 3 weeks in 1905, showing a decrease of £713,758.

## Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	4%

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### IN MEMORIAM.

R. SPEARMAN E. FARRIES.—In fondest remembrance of my noble brother, 3rd February 1902.

### Leading Articles.

#### Solicitors and Bookkeeping.

FROM the point of view of our readers considerable interest attaches to the Intermediate Examination for solicitors held last month, as upon this occasion—after a lapse of some thirty years—Accounts and Bookkeeping has been restored as a subject upon which candidates are required to show some knowledge.

We gather that the aims of the Examination Committee are not so much that candidates should be able to show themselves possessed of a practical knowledge of the subject, as that they should be able to demonstrate to the examiners a sufficient acquaintance with its leading principles to enable them to understand such accounts as may come before them in the course of practice, and upon which they may be required to give their clients advice. As the natural result

of such understanding—provided, of course, it be of the right quality—it may be assumed that the next generation of solicitors will know, perhaps, even somewhat better than the present when the questions of account involved are of sufficient importance to make it desirable that the assistance of a professional accountant should be invoked.

So far as the examination to which we have referred is concerned, it must be admitted that the Committee has not erred upon the side of expecting too much from law students. Only five questions are set, and two hours are allotted to the examination, so that, other things being equal, it will be seen that the time limit presses far less hardly upon the law student than upon the Intermediate accountant student. A perusal of the questions themselves, however, still further emphasises this difference, and it is difficult to see how any student possessed of the requisite amount of knowledge could fail to very completely answer the questions set in somewhat less than half the allotted time. Possibly, however, in making this estimate we are not allowing sufficiently for the different point of view, and for the fact that the student who is of necessity not thoroughly familiar with accounts can hardly be expected to think so quickly upon the various points arising as the ordinary accountant student.

Of the questions selected, the first one inquires how the Bankers' Pass Book of an ordinary commercial firm may be reconciled with that firm's books. This is a sufficiently elementary question, of course, for the accountant student, but a very excellent one for the purposes here under consideration, in that it points out that when two parties have mutual transactions each naturally records those trans-

actions from his own point of view, and that, therefore, while any of these transactions remain uncompleted, the records can hardly be expected to agree in all particulars; while even when the whole series of transactions has been brought to a conclusion there will necessarily be discrepancies of dates in the two sets of records.

The second question inquires as to the meaning of the abbreviations "Dr." and "Cr.," and to which side of an account book they are applicable. This, again, seems a somewhat elementary question, but is really, of course, of a very far-reaching character, underlying as it does the whole principles of modern accounting. In view of the very hazy notions that some full-blown solicitors have upon the matter, it must be conceded, we think, that even such a question as this has its value.

The third question, which is of a slightly more practical character, inquires how the payment of an account subject to discount would be recorded in the books of a trader. If adequately answered it raises the whole question of the substitution of totals for a corresponding number of items, thus enabling a complete system of double-entry to be kept with but little more labour than that required for ordinary so-called single-entry.

The fourth question names five items to be found in practically all commercial Trial Balances, and inquires which (if any) of these should be included in the Profit and Loss Account. This question is a little more tricky, in that two of the items enumerated are Balance Sheet items, two others are Trading Account items, and the remaining one, Wages, may find a place either in the Trading Account or Profit and Loss Account, according to circumstances. Literally speaking, therefore, the candidate would be

quite justified in replying that the last-named was the only one which should ever be included in the Profit and Loss Account, but we doubt whether this answer would be thought entirely satisfactory, and we would suggest that a better wording for the question would have been to request the candidate to indicate which of these items would find a place in the Balance Sheet, which in the Trading Account, and which in the Profit and Loss Account. Catch questions are, no doubt, perfectly legitimate where a fairly advanced standard of knowledge is to be looked for, but in quite elementary papers they are, we think, somewhat out of place.

The last question set is one which might, we think, with great advantage be employed in far more advanced examinations, although it is of so fundamental a character that it is certainly not out of place in the most elementary. It requires the candidate to give an instance of an error in posting which would not be brought to light by a Trial Balance, thus raising the whole question of the fundamental basis of accounts, and the necessary limitations of all accounting systems.

Upon the whole, the question is, we think, a very good one, but if there is a fault to be found with it we should be inclined to put it down to the entire absence of anything in the nature of clerical bookkeeping. Very possibly such questions were intentionally avoided, but if only on account of the practical impossibility of finding a sufficient number of theoretical questions to keep up the requisite supply for four examinations per annum, we would suggest that in future something in the nature of short *pro formâ* accounts might well be asked for. Bearing in mind the ample time limit provided this should certainly cause no difficulty.

### Colliery Shortworkings.

WE had quite expected that the letter under the above heading signed "Tonnage Rent," which appeared in our issue of the 6th ult., would have produced a far larger amount of correspondence than it has hitherto evoked. Our correspondent's suggestions are of a far-reaching and most radical description, and would appear to attack the fundamental basis upon which the accounts of most collieries are framed. Under these circumstances the tacit acceptance of his views by all but a single correspondent seems little less than extraordinary.

Shortly stated, "Tonnage Rent's" point of view seems to be that as the minimum rent must under all circumstances be paid to the landlord in each year, therefore the minimum amount that can be charged to Profit and Loss in each year is the amount of such minimum rent; whereas, of course, the usual practice is to carry forward any proportion of the minimum rent which is redeemable out of future workings, provided there is a fair prospect that it will be so redeemed within the prescribed or a reasonable space of time.

It is hardly necessary for us to elaborate the arguments in favour of this new proposal. They are, at all events, put forward with quite sufficient plausibility by "Tonnage Rent," and when all that is possible has been said in their favour it amounts merely to the statement that that which is payable in any financial period must be chargeable. Put thus baldly, it will be seen that the arguments rest upon an absolute fallacy. The cash basis is, of course, useful as a test of the reality of revenue items, whether debit or credit, but no true Revenue Account can possibly be compiled



upon a strict cash basis, and that is a remark which applies quite as much to the expenditure as to the income side of the account. Indeed, the statement is, when duly examined, so extraordinary that one is filled with wonder that it should ever be put forward, except perhaps by a district auditor, or one who has had equally few opportunities of acquiring a sound knowledge of accounting principles.

On the other hand, of course, before any payments can be carried forward as assets—the only possible alternative to charging them against current Revenue—it becomes important that one should be satisfied that there is every reasonable probability that they are either of permanent value (and may, therefore, be permanently capitalised) or else that they have a definite realisable value equal to the amount at which they are brought forward in the Balance Sheet. There can be no permanent value in shortworkings, but provided only that the events prove them to be capable of being redeemed, they have in the meantime a definite realisable value. It may, during that period, be extremely difficult to express any very certain opinion upon their value one way or the other—and in cases of doubt clearly the only prudent course is to be upon the safe side, and to charge them against Revenue—but as a general question of principle it seems to us ridiculous to suggest that there can be any objection to the recognised and customary mode of treatment.

### Weekly Notes.

**Graduated Income-Tax.** In the course of a leaderette on the much-ventilated question of graduated income-tax, a contemporary, taking a leaf out of our back volumes, gives an interesting table showing the manner in which our present system itself affects the rate of progression:—

Total Income	Portion Exempt	Taxable Income	Tax at 1s. per £	Percentage of total Income
£160 and under	The whole	Nil	Nil	Nil
200	£160	£40	£2	1 per cent.
300	160	140	7	2½ "
400	160	240	12	3 "
500	150	350	17 10s.	3½ "
600	120	480	24	4 "
700	70	630	31 10s.	4½ "
800 and over	Nil	The whole	..	5 "

If all the advocates of graduated income-tax would only publish tables showing their practical working, the Chancellor of the Exchequer, who will soon be thinking of his Budget Statement, would have many opportunities of seeing the proposed reform in all its grades. These columns are, of course, always open to our readers.

**"Departmental Decisions."** The publishers of that excellent volume *The Local Government Annual* have conceived the idea of collecting the various opinions expressed by several Government Departments from day to day on practical points of difficulty, and the first quarterly issue of "Departmental Decisions," Michaelmas to Christmas, 1905, has just been issued. There are over 200 decisions by six Departments, and every branch of local government is affected, so that the daily reference to the volume on the part of all those engaged in the administration of local government seems certain. Practitioners and students might also bear the volume in mind, as municipal topics are so much to the fore nowadays.

**Bankers and Competition.** At the annual meeting of Lloyd's Bank, Lim., held last week at Birmingham, Mr. J. Spencer Phillips, the chairman of the directors, made some interesting remarks relative to the internal mechanism of the science of banking which our readers generally, and especially those interested in political economy, will do well to observe. Mr. Phillips is reported to have said that in December last the French Exchange fell heavily, and in consequence of the heavy withdrawals, which threatened to deplete their resources in the Bank of England, the latter institution adopted new tactics and approached the principal Clearing House bankers, asking their co-operation to take the surplus money off the market and place it on deposit at a low rate of interest. Upon this the banks charged 5 per cent. for advances, and the effect was "electrical." As no bills were discounted under 4 per cent. the French Exchange rose accordingly, and the danger of the withdrawal of gold ceased. Mr. Phillips went

on to say that Lloyd's Bank cordially welcomed this new departure, for the more the Bank of England co-operated with the leading bankers the better for everybody, as they were to a certain extent interdependent upon each other. It was essential for a balance to be kept at the Bank of England so that the banks might settle their differences, but in his opinion the balance was much larger than was really necessary for that purpose. He thought it was but reasonable to expect that these balances should not be employed to the detriment of other banks, yet cases had occurred, he was told, where the Bank of England agents had taken their customers' bills, not merely at their bank minimum or at even the fine rate of first-class bills, but at a lower rate than that. It was certainly an anomaly that the Bank of England should take money in London to strengthen the market, and then offer it in the country at lower rates. This was rather hard on the country bankers, and he trusted that every effort would be made to render the co-operation between the banks efficient. He had raised his voice in London against what he called the suicidal competition—it was detrimental to the public, not to the shareholders.

**The Departmental Committee on Municipal Accounts.** It is reported that at a recent meeting of the Municipal Trading Committee of the London Chamber of Commerce, called to consider the desirability of immediate representations being made to the Local Government Board in connection with the appointment of a Departmental Committee upon Municipal Accounts, it was resolved "that having regard to the unanimous recommendations of the Joint Committee on Municipal Trading, 1903, it would appear to this Committee that the Departmental Committee recently appointed by the Local Government Board in connection with municipal accounts, and consisting principally of Government and municipal officials, does not conform to the recommendations of the Joint Committee, and that its decisions cannot command the confidence of the commercial community." It was stated at the meeting that arrangements were being made for a conference of Chambers of Commerce, industrial associations, and municipal corporations, to be held on the 5th March next, to consider the questions of an independent professional audit of municipal accounts and the standardisation of such accounts. It is said that a large number of the bodies invited to the conference are in favour of the recommendations of the Joint Committee on these points.

#### **The Law as to Lost Cheques.**

The West Derby Guardians had before them at a recent meeting a question of some interest as to responsibility with regard to lost cheques. It appears that the Guardians had forwarded a cheque for £66 3s. 8d. to the Ancient Order of Foresters in Gloucester, as interest for money lent, and that the cheque had gone astray. Application was accordingly made for a new cheque, which the Guardians were willing to supply upon receiving an indemnity from the Foresters in case the previous cheque was presented for payment, while, upon the other hand, the Foresters did not see their way to give the required indemnity. At a recent meeting of the Guardians their clerk stated that the cheque was marked "not negotiable," but that their bankers had stated that they could not refuse to cash the cheque if it were handed to them in a *bona fide* way, and accordingly it was resolved that the Foresters be again asked for an indemnity. It is, of course, possible that the above statement of the facts, which we derive from the columns of the *Municipal Journal*, may be incomplete, and indeed we are inclined to think that it must be, as every bank manager must know perfectly well that the holder of a cheque which has been marked "not negotiable" cannot establish a better title to that cheque than any of its previous holders. That being so, the risk run by the Guardians in issuing a duplicate would appear to arise only in the event of the Foresters themselves having parted with the original cheque, which, to put it mildly, seems an excessively remote contingency. The real crux of the matter appears never to have been raised from first to last, which was as to who was responsible for the transmission of the cheque by post. If the payees requested the cheque to be so forwarded, the risk and all attendant consequences devolve upon them. If, on the other hand, they merely required payment of what was due to them, it is the duty of the Guardians to make such payment when called upon.

#### **Postal Order Frauds.**

We understand that some dissatisfaction has been caused by the new Post Office regulations which provide that if the number of postage stamps affixed to postal orders exceed three, or their aggregate value exceeds 5d., the surplus is to be disallowed when the order is presented for payment. Those who criticise this rule should bear in mind, however, that it has been framed to check an ingenious mode of fraud which, we understand, was at one time somewhat common. When the payment of an order

was deferred it was found that dishonest payees used sometimes to affix postage stamps over the words "deferring payment," and so secured the immediate cashing of the order. The new form, which provides space in which alone stamps are to be affixed, renders this impossible, and if for no other reason it is, we think, well worthy of support. Apart from that it need perhaps hardly be pointed out that the new rules are perfectly intelligible, and that those who do not care to read them are hardly entitled to grumble at the consequences.

**Municipal Accounting.** At a recent meeting of the London County Council the question of municipal steamboats was again raised. A councillor asserted that between two thousand and three thousand pounds had been charged to Capital which upon business principles ought to have been charged to Revenue, and he made a sporting offer to the Council to have the accounts examined at his own expense by a competent accountant, as he was convinced that they were so manipulated by the Committee as to conceal from the ratepayers the true state of the facts. In reply, the Chairman stated that the money charged to Capital which was referred to had been spent on repairs to the boats. If that be all the explanation that can be vouchsafed, it must be admitted that the strictures advanced were in no sense misplaced. Every student of accounts knows that repairs, as such, can never under any circumstances be a legitimate Capital charge.

**Bankrupt Solicitors.** At a meeting of the Law Society, held on the 26th ult., the President referred to the remarks made by Mr. Justice Grantham at the recent trial of a solicitor who was an undischarged bankrupt. He pointed out that the Council had introduced many Bills into Parliament for the express object of obtaining power to refuse to renew the annual practising certificate of a solicitor who was an undischarged bankrupt, and added that such a Bill would be again introduced during the coming session, when the Council earnestly hoped that it would become law. The question is, it seems to us, one that is really hardly open to discussion. Bearing in mind the fact that while an undischarged bankrupt is carrying on business it is the duty of his trustee to keep a watch upon his actions, and to intervene at any time when it appears likely that such intervention would be in the interest of creditors, it is clear that the clients of such

a solicitor must of necessity incur serious pecuniary risks if at any time their solicitor has in his possession moneys belonging to them. It should be the duty of the Legislature, which provides special privileges to solicitors, to see that in so fundamental a matter their clients' interests are duly protected; and, indeed, speaking upon general grounds, it is idle to withhold the discharge of any bankrupt if in the meantime he is to be allowed every possible facility to continue carrying on business upon the same lines as before.

**Judicial Changes.** The first piece of judicial patronage has already fallen to the new Lord Chancellor on the retirement of Lord Justice Mathew, whose place has been filled by the appointment of Mr. J. Fletcher Moulton, K.C., to be a Lord Justice of Appeal. The new Judge is doubtless well-known to our readers as the greatest living authority upon patent law. The late Lord Justice, who is of Irish descent, was called to the Bar at Lincoln's Inn in 1853, and achieved a great reputation as a commercial lawyer. He never took silk, but in 1881 was raised to the Bench as a Judge of the High Court. Possibly because he failed to conform to the tradition of the Bench to take no active part in party politics his preferment was deferred longer than his judicial abilities would appear to have justified, but in 1901 he was appointed to the Court of Appeal. Although for twenty-five years an occupant of the Bench, he has never shown the least sign of approaching years, and his retirement, which we understand is due solely to ill-health, will cause a vacancy in the Court of Appeal which even Lord Justice Moulton's preferment can hardly be expected to replace.

### **Correspondence and Enquiries.**

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### **Gas Companies and Depreciation.**

*(To the Editor of The Accountant.)*

SIR,—Can any of your numerous readers find arguments to support the contention that a statutory gas

company need not provide in its accounts for the reduction of the value of its plant by wear and tear, except in so far as it is met by the ordinary repairs and renewals?

Yours truly,  
ENQUIRER.

### **The Local Government Board Inquiry on Municipal Accounts.**

*(To the Editor of The Accountant.)*

SIR,—Referring to your article on the Local Government Board Inquiry, I hope the fact will not be lost sight of that a number of municipal corporations employ Chartered Accountants as Special Auditors (in addition to the elective auditors). I would suggest that either the Committee appointed or the Council of the Institute take steps to get authentic information as to this, and generally as to the work done by the Special Auditors so appointed; for, should the question of Audit be considered by the Committee, this information would be found to be useful.

Yours, &c.,  
CHARTERED ACCOUNTANT.

### **"Account Payee."**

*(To the Editor of The Accountant.)*

SIR,—Many business houses are in the habit of crossing their cheques "account payee," in the belief that cheques so crossed can only be credited to the account of the payee. This crossing is not, however, authorised by the Bills of Exchange Act, 1882, and does not constitute an absolute safeguard, inasmuch as it does not bind the collecting banker. In the circumstances it may well be that the practice of bankers with regard to the crossing mentioned is not uniform, and it would be interesting to know the experience of some of your readers in the matter.

It is within my own experience that an "order" cheque for a large amount, payable to a client and crossed "account payee," was endorsed and handed to a firm of stockbrokers in payment for stock, and on being paid by them to their own account was collected by their bankers without demur. I believe, however, that if bankers have any reason to suspect that such a cheque is being improperly dealt with, they will make inquiries before crediting it to a customer.

Yours faithfully,  
L. WHITEM HAWKINS.

London, 24th January 1906.

### **Deed of Assignment and Trust Moneys.**

*(To the Editor of The Accountant.)*

SIR,—I shall be glad to know if any of your readers have had a similar case to the following:—

A commercial hotel proprietor executes a deed of assignment.

At the time he had in his possession money belonging to a traveller staying in the hotel, which the latter had given to him for safe custody.

Has the traveller any other rights than an ordinary creditor?

Yours truly,  
25th January 1906. F. M.

### **Colliery Shortworkings.**

*(To the Editor of The Accountant.)*

SIR,—I am pleased to see a reply to my letter on the above subject in your issue of the 27th inst.

The views expressed by "Royalty" practically agree with my own, with the one exception that he thinks the position of present shareholders should be considered, and that, therefore, in their interest, the "shorts" should be treated as an asset.

I do not think this argument a sound one. The treatment advocated by me of never debiting less than the minimum rent in any year is, of course, equivalent to setting aside a "Reserve" against the shortworkings, if any. If it is argued that such a Reserve is against the interest of present shareholders, the same argument would naturally apply to the setting aside of any other Reserves, and it can hardly be contended that no Reserves should be made for the future because other individuals than the present shareholders would get the benefit.

It does not follow either that present shareholders would be losers, because if "shorts" are considered a valuable asset, the present shareholders, if disposing of their shares, would naturally ask an enhanced value in consequence, in the same way as shares are always enhanced in value by the existence of Reserves.

Any benefit the future shareholders might receive they would be fully entitled to, not only for the above reason but also from the fact that, if recovered at all, the shorts are only received on account of the improved workings since they became shareholders.

I am still of the opinion, already expressed, that all companies should keep a Reserve of an equivalent sum to balance the shorts. No risk is then incurred of over-dividing profits, and no financial tightness is experienced by paying away in dividend a portion of profits which

at the time is represented *not* by cash but by "shorts," and which may not become *cash* for years, and perhaps never at all.

In considering profits available for dividend the pockets of present or future shareholders need not, and ought not, to be considered, but only what is the correct position at the time and the most prudent course to adopt in the interest of the company as a whole.

Yours faithfully,

January 29th 1906.

TONNAGE RENT.

[The above letter was received after our article was written. We agree as to the expediency of not dividing profits up to the hilt, but that is, of course, no reason why the actual amount of such profits should be concealed.—*Ed. Acct.*]

### Official Audit of Electric Lighting Accounts.

(To the Editor of *The Accountant*.)

SIR,—I would be much obliged if you or some of the correspondents of *The Accountant* could either answer the following query or direct my attention to where the answer could be found.

Does the Board of Trade auditor appointed under Section 6 of the Schedule of the Electric Lighting (Clauses) Act, 1899, act in the same manner as provided by the Board of Trade in forms of provisional orders issued by them under the Electric Lighting Acts of 1882 and 1888, and more particularly do the Board of Trade still adhere to the same view as quoted in Pixley's Eighth Edition, p. 28?

If the Board of Trade auditor under the Act of 1899 has more extended powers, is it necessary for an electric light company registered under the Companies Acts, 1862-1900, to comply with the 21st Section of the 1900 Act by appointing another auditor? Further, if this be necessary, and there be a conflict of opinion, with whom does the decision of the point in dispute rest?

Apologising in advance for taking up so much space,

I am, yours faithfully,

27th January 1906.

PERPLEXED.

### The Chartered Accountants Students' Society of Kingston-upon-Hull.

Syllabus—Spring Session, 1906.

President: Mr. W. F. Harris, F.C.A.

Hon. Sec.: Mr. Alfred G. Pearson, Parliament Chambers, Quay Street.

Jan. 16 (Tuesday).—Fourth Annual Dinner.

Feb. 7 (Wednesday).—Lecture, "Brewery Accounts." Mr. Herbert Lanham, A.A.C. (London).

„ 21 (Wednesday).—Lecture, "The Winding-up of Joint Stock Companies." Mr. W. H. Owen, LL.B. (Hull).

Mar. 7 (Wednesday).—Lecture, "Vouchers." Mr. A. W. Retchford, A.C.A. (Hull).

„ 21 (Wednesday).—Lecture, "Colliery Accounts." Mr. E. E. Price, F.C.A. (London).

April 4 (Wednesday).—Lecture, "Fraudulent Dealings with Property with special reference to Bankruptcy." Mr. R. W. Aske, LL.D. (Lond.) (Hull).

„ 18 (Wednesday).—Reading of the President's Prize Essays.

The meetings of the Society are held in the Hall of the Incorporated Law Society, Bowlalley Lane, Hull, commencing at 7.45 p.m. prompt.

#### President's Prize Essay.

Subject: "The Verification of the Assets in a Balance Sheet." Members are reminded that essays for the above competition must be sent in to the Secretary not later than the 31st January 1906.

### The Sheffield Chartered Accountants Students' Society.

(Affiliated with the  
Union of Chartered Accountant Student Societies.)

#### Syllabus for Spring Session 1906.

President: Mr. F. E. Foster, A.C.A.

Vice-President: Mr. S. Taylor Gill, F.C.A.

Hon. Secretary: Mr. H. Oswald Bolton (with Messrs. Macredie & Evans).

Jan. 31 (Wednesday).—Lecture, "The Licensing Act." Mr. A. B. Chambers, Solicitor, Sheffield.

Feb. 14 (Wednesday).—Lecture, "Some Points in Accountancy." Mr. S. S. Dawson, F.C.A., Liverpool.

„ 28 (Wednesday).—Debate, "Is Municipal Trading Desirable?" *Affirmative*: Mr. A. H. Heap, A.C.A. *Negative*: Mr. F. C. Young, A.C.A.

Mar. 14 (Wednesday).—Mock Arbitration. (Details will be circulated later).

„ 21 (Wednesday).—Lecture, "Colliery Accounts." Mr. A. D. Barber, A.C.A., Sheffield.

„ 29 (Thursday).—Lecture, "Some Points on the Duties of a Trustee in Bankruptcy." Mr. A. F. H. Harrop, Solicitor, Sheffield.

Apr. 11 (Wednesday).—Social Evening.

All lectures, &c., will be delivered in the Library, Hoole's Chambers, Bank Street, Sheffield, at 6.45 p.m., unless notice be given to the contrary.

#### *Essay Competition 1905-1906.*

The Committee of the Union of Chartered Accountant Student Societies offer a First Prize of Five Guineas, a Second Prize of Two Guineas, and a Third Prize of One Guinea, for the three best Essays on "The Difference in Constitution and Relative Advantages of Private Firms and Limited Companies, and the matters of Account involved by a Conversion."

In addition to the above, Mr. M. Webster Jenkinson has offered a Prize of £2 2s. to any member winning the first prize, and £1 1s. if second or third; and your Committee offer the sum of £2 2s. to any member who takes any prize in the competition.

Essays must be sent in on or before March 31st 1906.

Classes in Accounting and Auditing are held on alternate Saturday mornings, 10 to 12, commencing January 6th. Lecturer, Mr. M. Webster Jenkinson, Chartered Accountant.

#### *Junior Class.*

A Junior Class in Accounting will be conducted by Mr. M. Webster Jenkinson, A.C.A., on alternate Monday evenings, commencing 8th January, at 6.15.

This class is specially intended to meet the requirements of students who have recently been articled, and have not had the opportunity of much practical experience.

Test Papers will be set each fortnight, and each student attending the classes will be expected to answer in proper form the questions contained in the papers.

Law Classes are held on alternate Saturday mornings, 10 to 12, commencing January 13th. Lecturer, Mr. Horace Wilson, Barrister-at-Law.

### **Chartered Accountants Students' Society of London.**

#### **Report of Departmental Committee on Income Tax.**

ON Wednesday, November 1st 1905, the Society held a discussion on the Report of the Departmental Committee on Income-tax, when Mr. H. Woodburn Kirby, F.C.A., presided.

Mr. A. F. Dodd, F.C.A. (Chairman of the Committee of the Union of Chartered Accountant Student Societies), opened the discussion.

The Chairman said Mr. Dodd had come all the way from Liverpool to give them the benefit of his opening address. He was sure the remarks which fell from Mr. Dodd would be of great value to them, and should lead to an important discussion.

Mr. Dodd then read a paper as follows:—

The subject to be discussed at this meeting is the recently issued Report of the Departmental Committee on Income-tax. It will be remembered that this Committee was appointed at the time when the Budget for 1904-5 was under consideration, and in order to satisfy the demands of the Parliamentary members who expressed national dissatisfaction with the existing administration of the tax.

A brief review of the work done by the Committee will be helpful to our subsequent considerations.

The Committee consisted of the following gentlemen:—

Right Hon. Charles T. Ritchie, M.P., late Chancellor of the Exchequer (Chairman).

Sir Henry Primrose, Chairman of the Board of Inland Revenue.

Mr. Sydney Buxton, M.P.

Mr. Cosmo Bonsor, Chairman of Commissioners of Income-tax for the City of London.

Mr. W. Gayler, Chief Inspector of Stamp Taxes.

Mr. Adam Murray, F.C.A., one of the General Commissioners of Income-tax for the City of Manchester.

This Committee was appointed "To inquire into and report whether it is desirable to effect any alteration in the system of the income-tax as at present prescribed and administered under the following heads:—

- (1) The prevention of fraud and evasion.
- (2) The treatment of income derived from copyrights, patent rights, and terminable annuities.
- (3) The allowance made in respect of the depreciation of assets charged to Capital Account.
- (4) The system of computing profits assessable under Schedule D on the average of the profits actually realised in the three years preceding the year of assessment.
- (5) The rules and regulations governing the recovery by taxpayers of over-payment of income-tax."

The inquiry was further extended to ascertain whether co-operative societies enjoy under the present law any undue exemption from liability to income-tax.

The Committee met on fourteen occasions, from 7th June to 9th December 1904. They examined thirty witnesses, who comprised representatives of Income-tax Commissioners, Chambers of Commerce, Trade Associations, Accountants' and Actuaries' Societies.

The Committee's Report covers some twenty-one pages of foolscap, and consists of 139 paragraphs. These details are stated to show that, however desirable, a full and complete discussion of this Report could not be accomplished within the time now at our disposal.

We shall therefore have to limit our present considerations to three out of six points with which the Report deals. These three points are:—

- (a) Fraud and Evasion.

- (b) Depreciation of Assets charged to Capital Account.  
 (c) The Three Years' Average System.

In the preamble to their Report the Committee state—

- (1) That in their opinion no drastic alterations are necessary in the present administration of the income-tax laws.  
 (2) That under existing circumstances the tax is levied with a minimum of friction and a maximum of result.

If these are the opinions arrived at after the evidence adduced in the Appendix to the Report, then we shall undoubtedly join issue with the Committee, and with some of their recommendations, in so far as they relate to the points we are about to consider.

With regard to Fraud and Evasion, the Committee recommend:—

- (1) That, under penalty, every person chargeable to income-tax be compelled to make a return.
- (2) That the penalties should be proportionate to the circumstances of those cases where no return is made.
- (3) That a public prosecution should take place in flagrant cases of fraud or evasion.
- (4) That the form of return now in use should be simplified.
- (5) That the Revenue authorities should be empowered to make a surcharge or supplementary assessment at any time within three years from the end of the year of assessment.
- (6) That the schedule of persons employed should be returnable by law, and not, as at present, at the option of the employer.

Of these recommendations to prevent fraud and evasion we can support the suggestions—

- (a) That every person be compelled to make a return.
- (b) That substantial penalties be inflicted upon those who wilfully and designedly make false returns.
- (c) That publicity, through the medium of an action at law, would be expedient in certain flagrant cases.

We do not support those recommendations which propose—

- (d) To inflict monetary penalties for merely incorrect returns, or such as may be made under misapprehension.
- (e) To extend the period within which an inaccurate assessment may be remedied to three years from the end of the year of assessment.

The reasons for assenting to the first three recommendations are sufficiently obvious; a word or two is required upon those from which we dissent.

The very elementary acquaintance with matters of account possessed by the great number of taxpayers (a form of ignorance which makes its appearance frequently

in income-tax officials), together with the mystifying character of the directions upon the existing form of return, are a good answer to many of the incorrect, but otherwise *bond fide* statements, sent in by the majority of taxpayers hitherto. As the English law at present stands a trader is not compelled to keep books of account, and, failing such a law, it seems out of the question to obtain accurate returns in every case. First let there be an enactment to ensure the material for compiling accurate returns; and, second, an honest, simple, and intelligible form for the taxpayer to fill up, then let the penalties be made adequate and proportionate for inaccuracy or default.

To extend the period for insufficient or incorrect assessment is to afford even wider scope than at present exists for the issue of ridiculous and unreasonable assessments.

If every taxpayer were compelled to keep proper accounts, and to make proper returns under suitable penalties, the vexation now caused through the peculiar, and at times unnecessary, exactions of Surveyors would practically disappear, since each taxpayer would be assessed according to his own signed declaration, for which he has a penal responsibility.

To support the assertion that fraud and evasion are extensively practised, the following instances were submitted to the Committee by the Inland Revenue authorities:—

#### I.—FRAUD AND EVASION.

Cases cited in Appendix VIII., p. 32.

##### (a) As to Fraud:—

Case	Year	Returned by Taxpayer	Assessed by Additional Commissioners	Remarks as to Ultimate Payment
A.B.	1889 1890	£ 13,400 0 0 20,440 1 3	£ 20,367 0 0 31,703 0 0	Assessment for 1889 amended to £19,966. Return 1890 increased by £10,653 with treble duty in each case.
C.D.	1890	600 0 0	4,000 0 0	Double Duty paid on £2,030, penalty of £10 and single duty on £600.
E.F.	1895	6,000 0 0	60,000 0 0	Appellants admitted that £13,666 should have been returned. Assessment amended to £7,666 and treble duty.
G.H.	1899	10,350 0 0	10,350 0 0	Prospectus issued subsequently stating average profits for past 3 years £21,374. Assessment amended to this figure and treble duty.
I.J.	1902	No return	50,000 0 0	Appellants paid to Commissioners' Bank Account £2,797 ss. 9d. in respect of "deficiencies in former years," whereon assessments were reduced as follows:— 1902 to £26,292 1903 " 17,018 I.J. was then called and severely reprimanded by the Board.

(b) As to evasion :—

CASES CITED IN APPENDIX VIII., p. 34.

	1900	1901	1902	1903			Result
				Amount Returned	Assessor's Estimate	Additional Commissioners' Decision	
A	No Return Assessed £500	Returned £500 Assessed £500	Returned £500 Assessed £1,000	£1,000	£3,000	£2,000	Duty Paid
B	No Return Assessed £1,000	No Return Assessed £1,000	No Return Assessed £1,200	..	£2,000	£2,000	Do.
C	Returned £1,850 Assessed £2,000	Returned £1,700 Assessed £2,500	No Return Assessed £3,000	£1,700	£5,000	£4,000	Do.
D	Returned & Assessed £800	No Return Assessed £1,000	No Return Assessed £1,250	..	£3,000	£3,000	Do.
E	Returned & Assessed £1,925	Returned £1,750 Assessed £2,000	Returned £1,635 Assessed £2,000	£1,750	£8,000	£5,000	Do.
F	Returned & Assessed £2,000	Returned £2,000 Assessed £2,500	Returned £1,500 Assessed £3,000	£2,250	£6,000	£6,000	Do.
G	Returned & Assessed £450 Ab.	Returned & Assessed £450 Ab.	Returned & Assessed £450 Ab.	£450 Ab.	£1,537	£1,537	Do.

In addition to the instances given above there is another class of cases which frequently escape assessment; these cases come under the head of Legal Evasion.

Many firms which, to all intents and purposes, carry on business in the United Kingdom, are technically domiciled abroad, the right of acceptance or refusal concerning any act or business being reserved for confirmation in places where the income-tax laws do not apply. It is stated in Appendix VIII., p. 36, that this kind of evasion extends to Belgian iron, French silks, German, French, and Italian wines, and to merchandise peculiar to foreign trade with various foreign countries, and with India and the Colonies.

Another illustration is afforded by companies which are registered in Jersey, Guernsey, Johannesburg, Pretoria, or some other foreign or colonial centre. The operations of such companies in the United Kingdom are conducted by local committers resident in this country who, for all practical purposes, are the directors possessing nominally restricted powers. At page 129 of the Appendix, in answers to Questions 1103 to 1122 inclusive, information is given showing how legal obligations are evaded. By marking letters, invoices, and business communications generally, with such limitations as "subject to acceptance," "F.O.B.," "C.I.F.," the traders claim exemption from taxation on the ground that the contract or delivery, though practically negotiated in this country, is technically made abroad. Another plan is the granting of powers of attorney to local directorates, issued from what is nominally the head office of the concern, purporting to grant certain limited powers which by mutual consent become to all intents full and unrestricted.

To deal with such cases judicially is found to be exceed-

ingly difficult, if not useless, and the Revenue authorities urge that the existing law be so amended as to constitute a trade, nominally carried on by foreign or colonial parties, liable to income-tax, by reason of the "habitual sale of goods" and the "habitual performance of contracts for valuable consideration."

At the risk of self-assertiveness, it is suggested that if, in addition to these much-needed reforms, every taxpayer was required to have his return certified by a Chartered Accountant, any material loss of tax through fraud and evasion would quickly disappear, to the lasting benefit both of the Revenue and the taxpayer. The remuneration of such professional assistance could readily be fixed by scale in the majority of cases, of which one moiety might be borne by the Revenue and the other by the taxpayer. The work of the Income-tax Department, especially among Surveyors, would presumably under the circumstances be substantially diminished, and incidentally the number of Surveyors required would most likely decrease.

Where professional assistance is employed the penalties for false and inaccurate returns (if any) should be substantial and severe, not by fine merely, but by disqualification to trade for a specified period, as in the case of offences under the bankruptcy laws.

Concerning the subject of Depreciation, we touch the *pièce de résistance* as between professional accountants and representatives of the Revenue.

The document so frequently referred to in the evidence before the Committee as the "Leicester letter" (of which the text is given below) is not without some advantage to the taxpayer; but the point to be observed is that, until this Committee met and took evidence, the general public,



and many of the Revenue representatives throughout the country, appear to have been unaware of its existence, and of their respective rights and obligations with regard thereto.

The text of the communication called the "Leicester letter" is as follows:—

Treasury Chambers,  
Whitehall, S.W.,  
May 28th 1897.

Dear Sir,

The Chancellor of the Exchequer has had under his consideration the memorial of the Association of the Chambers of Commerce of the United Kingdom, which you sent him at the beginning of April.

The chief points raised in the memorial are as follows:—

- (1) That the allowances in respect of repairs and depreciation of machinery are insufficient, and the methods of calculating such depreciation are unsatisfactory.
- (2) That no allowance is made for the cost of replacing machinery which has become obsolete.

As to the first point, I am to say that, as the law now stands, deductions are allowed both in respect of expenditure incurred in repairs or alterations of machinery according to an average of the three years preceding the year of assessment, and also in respect of the diminished value of machinery by reason of wear and tear during the year. The allowance of these deductions is in the hands of the District or Special Commissioners, as the case may be, and they have to decide in each case as it arises the adequacy of the deductions allowed.

As to the second point, I am to say that the Board of Inland Revenue have given instructions to their Surveyor at Leicester, which is particularly referred to in the memorial, that, where a claim is made in respect of the introduction of more modern machinery in a factory, no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the existing value of the machinery replaced. Any excess in the cost of the new machinery over the actual present value of the old is in addition to the capital of the business, and cannot properly be regarded as a charge upon revenue for the purposes of income tax assessment.

I am to add that similar instructions will be given to Surveyors in other districts when this question arises there.

I am, Sir,

Your obedient Servant,  
(Signed) W. A. MOUNT.

The Secretary,  
Association of Chambers of Commerce.

The conclusions at which the Committee arrived upon the subject of depreciation of assets charged to Capital Account fall under two heads, and may be summarised as follows:—

As regards Depreciation of Plant, Machinery, &c., the Committee consider:—

- (1) That after all damage by wear and tear has been made good by repairs—short of renewal—a further allowance may be made in respect of the imperceptible and irremediable deterioration due to age.
- (2) That the policy indicated by the "Leicester letter" sufficiently meets the reasonable claims of machinery users in respect of the replacement of obsolete machinery.
- (3) That further steps are needed to make the law and authorised practice on this matter more generally known to taxpayers.
- (4) That the deduction for wear and tear (what they really mean is depreciation) should be claimed at the same time as the average profits are returned.
- (5) That where the year's business results in a loss, or in a profit insufficient to cover the depreciation admitted, such depreciation should be allowed as a charge, for purposes of average, in subsequent returns.

As regards Depreciation of Buildings and Leasehold Premises, the Committee are of opinion:—

- (1) That the allowance of one-sixth of the annual rack rent value of buildings was intended to cover not only maintenance and renewal, but, by inference, the eventual replacement of buildings as well.
- (2) That, having regard to the fact that as a rule the wear and tear of mills, factories, and similar premises, exceeds corresponding shrinkages in residential and other buildings, the full annual value under Schedule A should be allowed in computing profits returnable under Schedule D.
- (3) That the contention for a taxpayer to pay only on the difference between the annual value and the amount annually set aside for redemption of leaseholds is quite inadmissible.

There is no doubt that hitherto the amount of depreciation deducted for purposes of income-tax has been insufficient in the aggregate to compensate the taxpayers liable to loss in that direction. This assertion is fully substantiated by the following Statement showing the *total amount of income allowed* as a deduction from taxable profits on account of wear and tear of machinery and plant in the United Kingdom in each of the years 1893-4 to 1902-3 inclusive, as per Reports by the Commissioners of Inland Revenue.

(a) Year	(b) Amount of Income Exempted	(c) At a 5% Rate of Depreciation the Capital Values corresponding to these allowances would be
	£	£
1893-4	4,109,207	82,184,140
1894-5	4,372,409	87,448,180
1895-6	4,926,100	98,522,000
1896-7	5,756,775	115,135,500
1897-8	6,521,057	130,421,140
1898-9	7,094,184	141,883,680
1899-0	8,434,332	168,686,640
1900-1	9,870,726	197,414,520
1901-2	11,500,079	230,001,580
1902-3	12,707,580	254,151,600
Total for 10 years	£75,292,449	£1,505,848,980

Average Annual Allowance £7,529,244 9/10  
Average Capital .. 150,584,898

NOTE.—In Appendix IV. of the Report, page 14, there is a statement showing the rates of allowance in nine different centres, and fifteen separate trades. The average rate of allowance in the selected cases is 6.91%. The figures given in column (c) are not mentioned in the Appendix.

The allowance on £150,584,898 at average rate conceded according to tabular statement on page 14 of the Appendix, viz.: 6.91% is .. .. £10,405,416 9/20

The allowances on £150,584,898, the assumed capital invested in plant and machinery in the United Kingdom, as shown above, at 5%, is .. .. £7,529,244 9/10

The taxpayers would thus appear to have over-paid through short allowance for depreciation upon a sum of .. .. £2,876,171 9/20

This result indicates that a considerable difference exists between the average depreciation actually allowed, and that which was justly chargeable upon the basis of the average rates admitted by the Revenue authorities.

The anomaly becomes more noticeable when the foregoing figures are treated in another form.

Taking the last year of the period, viz. 1902-3, it is stated that the amount allowed for depreciation in that year was .. .. £12,707,580

Upon the basis of the average rate of depreciation allowed by Revenue authorities, 6.91%, the capital corresponding thereto would be £183,901,300, and from their point of view this figure presumably represents the capital invested in the vast factories, mills, works, and other undertakings throughout the United Kingdom.

Upon a 5% basis the estimated capital is £254,151,600 as shown above. 6.91% upon this sum amounts to .. .. £17,561,875

Again the taxpayers have lost on the allowances made, and appear to have over-paid tax upon a sum of .. .. £4,854,295

A moderate estimate of the capital invested in plant, machinery, and other assets in the same category, pertaining to established industries throughout the United Kingdom would, it is submitted, not go below the figure of £500,000,000.

At the rate of 6.91% upon this sum, depreciation would be .. .. £34,550,000  
Or do. 5% do. do. 25,000,000

Taking the latter figure, £25,000,000, it is very nearly double the amount allowed for depreciation in 1902-3, and it means that at 1s. in the £ the taxpayers overpaid in that year approximately upon a sum of £12,500,000 or equivalent to £625,000.

It is reasonable to assume that the major portion of the allowances shown above in column (b) represents amounts calculated upon diminishing balances of plant and machinery, and, if this be so, the marked inequalities just alluded to became accentuated.

From the statistics referred to we arrive at two conclusions:—

- (1) That the value of machinery and mechanical appliances used in various industries throughout the United Kingdom, and which are justly subject to a charge for inevitable depreciation, greatly exceeds the amount which the Revenue authorities have made the basis of depreciation allowances.
- (2) That it is reasonable to assume that, through ignorance or inability, or both, certain taxpayers have overpaid the amount justly due from them, to the extent that the allowance for depreciation has been inadequate.

Time does not allow me to deal with the matter of depreciation in relation to income-tax so fully as I could wish; but I must, before leaving it, mention two curious points arising out of the Report.

The amounts of depreciation allowed are headed "Amount of Income Exempted," and the same expression occurs in Paragraph 73 of the Report.

If a man is entitled to abatement, i.e., suppose he makes £1,200 net profit, and for any reason, apart from depreciation, the Revenue authorities agree that he shall pay tax only on £1,000, then there is a case of exemption. If before the £1,200 is ascertained £500 has been paid and charged for office salaries and general expenses, we should ridicule anyone who told us that such an amount was "exempted" from the man's income. Why, the fact is, all quibbles apart, no income is made until all charges thereon are met or provided for. How, then, can that be described as income which is not, and never can be, income? As well might it be said that for purposes of account an accruing liability was not a liability until it matured as to say that depreciation is income.

It is here that the initial trouble between the taxpayer or his representative and the Revenue officials commences.

The latter cannot, or will not, understand that the three classes of expenditure—Repair and Renewal, Diminution of Value through Wear and Tear, and Depreciation—though related, are as distinct in their nature as the income-tax is distinct from the Post Office revenue.

In fixing the basis of his charge for depreciation the owner of machinery will do one of two things. Either he will determine the life of his machinery and provide such a sum annually as will, after allowing for interest, create a sufficient fund to bear the cost of new machinery when the old shall have become useless, or he will create a General Improvement and Extension Fund for the replacement of worn-out and useless machinery among other things, not necessarily augmented periodically upon any settled basis having direct relation to his wasting assets, but regulated by such a percentage upon profits from time to time as prudence may suggest.

It is abundantly shown in the evidence upon this matter, detailed in the Appendix, that no uniformity of practice prevails as to depreciation deducted for income-tax purposes. The utmost confusion and inequality is apparent in the rates allowed in different parts of the country. For example, on page 14 of the Appendix we find:—

In Leicester the hosiery trade gets  $7\frac{1}{2}$  per cent. on full value of machinery, and a higher rate if justified on inquiry.

In Nottingham, only a few miles away, the same trade gets 5 per cent. on fixed machinery.

Again, in Leicester engineers get  $7\frac{1}{2}$  per cent. on full value, while in Cardiff engineers get 5 per cent. on written down value.

These anomalies are quite on a par with others of similar nature, which have hitherto distinguished the incidence of a tax that is alleged to be administered with a minimum of friction and a maximum of result.

The other curious point to which attention is now drawn appears on page 131 of the Appendix, in Question 1143, and in its answer, which are as follows:—

"Q.—You have spoken of depreciation being allowed for one year, but we have some evidence of the fact that this works unjustly in the case of firms which, instead of making a profit, have made a loss, and when therefore depreciation cannot be taken off."

"A.—*There is nothing to write off in such a case.*"

It would be interesting to know by what magic process a loss becomes a negligible quantity merely because it is not debited to Revenue. The Revenue officials, it is imagined, would not deem it the same thing to receive £500 from a taxpayer and to be creditors for £500 upon a hopelessly bankrupt individual. Yet it is with statements analogous to this sort of reasoning that income-tax officials not infrequently discuss, not the *income exempted from taxation*, but that imperceptible, irremediable, and, we may add, inevitable, deterioration arising from the varied

and complex causes which are comprehensively described by the term "Depreciation."

There is a tacit recognition of the principle that depreciation is a loss chargeable for income-tax purposes by the recommendation of the Committee that the loss sustained by a firm should, for purposes of average, hereafter include a charge for depreciation. The light in which Revenue officials have hitherto, and do still, regard this matter has been sufficiently set forth, and it is not unlikely that any attempted concession to the taxpayer in this direction will find strenuous opposition in official quarters.

The so-called "concessions" arising out of the "Leicester letter" are more apparent than real. The allowance for wear and tear, and for the repairs and renewals, is a matter entirely in the discretion of the District or Special Commissioners. If a trader claims that his machinery is liable to an annual depreciation of  $7\frac{1}{2}$  per cent. upon full value, and the Commissioners, who in very few cases have any technical knowledge of the subject, determine that an allowance of 5 per cent. on diminishing value shall be deducted, the trader has no option but to accept their dictum. Again, in the second clause of that letter, any outlay on replacements beyond the written down value of the obsolete asset is regarded as a capital outlay. That is to say, if a boiler has to be renewed with one of similar pattern, which costs 25 per cent. more than the injured one, through advance in price of steel and labour, or other cause, such increased cost is deemed to be "Capital Outlay," notwithstanding that, for purposes of the business, the new boiler merely supplies the place of the old one, and does not actually increase the intrinsic value of the assets of the concern.

The last clause of this letter is worth comment. It says that instructions will be given to Surveyors in other districts "when this question arises *there*." Accordingly the "Leicester letter" amounts to this:—

- (a) Taxpayers generally may be conceded depreciation, *if it please the Commissioners.*
- (b) Leicester may have the further and additional privilege of an allowance for obsolescence.
- (c) Taxpayers fully entitled to these privileges, who don't ask for them, won't get them.

Could anything well be more one-sided?

Much more might be said upon the subject of depreciation in its relation to income-tax, but we must pass on to the third point for consideration—namely, the

#### *Three Years' Average System.*

Considerable diversity of opinion appears to have obtained in the evidence given before the Committee upon this matter. The discussion of the system was made the occasion for a most emphatic condemnation of the provisions of Section 133 of the 1842 Act, as subsequently amended by Section 6 of the 1865 Act. The principal

reasons for such adverse criticism were doubtless suggested by the interesting examples mentioned in the memorandum of Sir F. Gore, Solicitor to the Board of Inland Revenue.

These cases are set out in the following schedule:—

### III.—THE THREE YEARS' AVERAGE SYSTEM.

Statement showing the operation of Section 133 of the Income Tax Act, 1842, as amended by Section 6 of the Act of 1865, as given in the Appendix to the report on Income Tax No. VII., pp. 23 and 24.

I. It is assumed that five distinct firms originally paid tax for the same year upon an average of £10,000; each firm's total profits for the three years amounted to £30,000; and during the year of assessment each firm's profits were £5,000. The year of assessment is assumed to be 1903-4.

Net Profits—	Firm A	Firm B	Firm C	Firm D	Firm E
1900-1 .. ..	£15,000	£5,000	£7,500	£10,000	£6,000
1901-2 .. ..	5,000	15,000	10,000	7,500	12,000
1902-3 .. ..	10,000	10,000	12,500	12,500	12,000
	30,000	30,000	30,000	30,000	30,000
Average under Sch. D ..	10,000	10,000	10,000	10,000	10,000
Amended under Sec. 133—					
1901-2 .. ..	5,000	15,000	10,000	7,500	12,000
1902-3 .. ..	10,000	10,000	12,500	12,500	12,000
1903-4 .. ..	5,000	5,000	5,000	5,000	5,000
	20,000	30,000	27,500	25,000	29,000
New Average .. ..	6,666	10,000	9,166	8,333	9,666
Former Average paid on	10,000	10,000	10,000	10,000	10,000
Amount on which Tax is returnable .. ..	3,334 + Nil	+ 834 + 1,667 +	334 = £6,169		

It is also stated in this memorandum that during the financial year 1903-4 the amount returned to taxpayers under the 133rd Section as amended was in round figures £344,000.

II. Taking the foregoing illustration and assuming the profits of the year of assessment (1903-4) to have been £9,000 instead of £5,000 in each case the results work out as follows:—

	Firm A	Firm B	Firm C	Firm D	Firm E
1901-2 .. ..	£5,000	£15,000	£10,000	£7,500	£12,000
1902-3 .. ..	10,000	10,000	12,500	12,500	12,000
1903-4 .. ..	9,000	9,000	9,000	9,000	9,000
	24,000	34,000	31,500	29,000	33,000
New Average .. ..	8,000	11,333	10,500	9,666	11,000

With the exception of firms A & D the original assessment of £10,000 would stand, the new average being in each of the other cases greater than that figure. As regards firm A, the difference to be returned will be calculated upon £10,000—£9,000, the profits of the year of assessment. The return to firm D will be upon £10,000—£9,666, the new average being greater than the profits of year of assessment. In these two cases, therefore, the tax returnable would be calculated upon a sum of only £1,334.

To arrive at a fair conclusion as to the reasonableness of the contention raised on behalf of the Inland Revenue

authorities, Illustration I. should not be taken to indicate a usual or frequent occurrence. It is submitted that Illustration II. approaches more nearly to a fair representation of the fluctuation in profits calling for adjustment of income-tax assessments under the 133rd Section as amended.

The conclusions at which the Committee arrived on the evidence and information given before them were:—

- (1) That the probable confusion and disturbance arising from an alteration in the method of arriving at taxable profits are, for the time being, a sufficient reason against the One Year System.
- (2) That while this would be the case with trade generally, there appears to be no reason why professional men and employees should not be assessed on the profits of the previous year instead of a three years' average.
- (3) That the anomalies arising under the operation of Section 133 of the 1842 Act should be redressed. Its abolition is recommended.
- (4) That the provisions of Section 134 of the 1842 Act, wherein a discretionary power is given to Commissioners in cases of diminution of profits owing to specific causes, and those of Section 23 of the Customs and Inland Revenue Act, 1890, which deals with losses, are sufficient to prevent hardship to any individual.
- (5) That during the first three years of a new business the assessment should be based on the actual profits of each year, adjusted if necessary at the close of the year.

The Average System now in vogue has certain advantages both for the Revenue and the taxpayer—quite apart from the disturbance arising through a change to a One Year System—which call for more than passing notice.

In prosperous times the Exchequer receives handsome returns from the income-tax, and the taxpayer is less disinclined to contribute thereto. But when periods of trade depression come over the business world, then both Exchequer and taxpayer are affected thereby. Cycles of prosperity and of trade depression are inevitable; they are experiences which cannot be disregarded or optimistically neglected. The One Year Average System means considerable fluctuation in the revenue available from the source of income-tax. It may be argued that this matter could be regulated by adjusting the rate of tax; this would mean a wide annual variation, causing both expense and annoyance to the taxpayer, and in avoiding this difficulty any taxation levied in other directions would most likely lead to other and more serious complications.

It is not clear why professional men and employees are bracketed together as suitable persons to be assessed upon one year's profits instead of three. Of all classes of income perhaps none are more liable to variation than those of professional men. Taking the case of medical men, it is well known that as a class they suffer heavily from bad

debts. The general practitioner will feel the effects of a depression in trade, because the distress and consequent breakdown of breadwinners increases the doctor's labours, while the resources available for remunerating them are quickly, and oftentimes irrevocably, diminished. In our own profession also the variation in its profits is considerable. In many practices they are quite disproportionate in distinct years, and especially where no account is taken of accrued charges upon work in course of completion.

As regards professional men generally, the Three Years' Average System would appear to be a distinct advantage, and the evidence upon this point given before the Committee must be regarded rather on the ground of convenience than as supporting any principle.

It may very well be that, from their slight acquaintance with matters of account, doctors, barristers, lawyers, architects, and the like, will not keep such exact monetary records as those which are needed for commercial transactions. These disabilities, however, do not, and should not, apply to professional accountants, since without any change of system, they are quite able to compute their liability for income-tax with facility and accuracy.

Again, there is the fact that under the Three Years' Average System the results of any particular year are not disclosed—a fact not without advantage in some businesses, where the credit and standing of the firm might be involved by disclosure under the One Year System. The argument put forward against this objection is that, besides the sworn declaration to secrecy by income-tax officials, any person or firm can be assessed by the General Commissioners. The taxpayer's point of objection, however, is not disclosure to income-tax officials so much as the possibility of information travelling into rival circles of the business concerned before the return actually reaches the official hands.

The only other point in the recommendations of the Committee upon the Three Years' Average System with which we can now deal is the suggested abolition of Section 133 of the 1842 Act, as amended by Section 6 of the Act of 1865.

The effect of the existing method of applying this 133rd Section as amended is this:—

A firm makes up its accounts annually to 31st December. Assume the return made for year 1905-6 to be:—

Profits for year to 31st December 1902	..	..	£12,500
Do. do. 1903	..	..	8,500
Do. do. 1904	..	..	9,000
			<u>30,000</u>
Amount of Return for 1905-6	..	..	£10,000

At the end of 1905 the profits for that year are found to be £9,500, or £500 less than was estimated.

A new average will therefore be ascertained thus:—

Year 1903	..	..	..	£8,500
" 1904	..	..	..	9,000
" 1905	..	..	..	9,500
				<u>27,000</u>
New Average	..	..	..	£9,000

Tax will be returned not upon the difference between £10,000 and £9,000, but upon the difference between original average £10,000 and £9,500, the profits of the year of assessment. Whichever is greater, the new average or profits of year of assessment, that is the amount (if any) for deduction from original assessment in appeals under this section.

Having now somewhat briefly considered the recommendations of the Committee, it is desirable to conclude with a review of the points discussed.

As to Fraud and Evasion, a more just apportionment of the burden of taxation than now exists, coupled with increased facilities for the preparation of accurate returns, are among the most pressing reforms needed to prevent dishonesty in this connection.

The present method of dealing with depreciation is not only unsatisfactory, but on the evidence and facts given in the Appendix to the Report that method is practically a discretionary one, operating unequally in many districts, and probably unjustly in the majority of cases where depreciation has to be considered.

The Three Years' Average System, and the side issue raised in relation to the 133rd Section of the 1842 Act as amended, under present circumstances would seem to be more generally expedient than a One Year System. The Revenue authorities state that in 1903-4 a sum of £344,000 was returned to taxpayers through the operation of the 133rd Section of the 1842 Act as amended; but against this must be placed the tax upon inadequate depreciation allowances, which, as shown in Schedule No. II. B, on a conservative estimate amounts to £625,000, or nearly double the sum repaid by the Revenue authorities.

Taken as a whole, we consider an impartial criticism of the Report on Income-tax and of the Appendix thereto must result in the conclusion that, as far as the taxpayer is concerned, he is not likely to derive substantial advantage from its recommendations, if adopted; while, as to the Inland Revenue Department, the greater portion of the Report is greatly in its favour.

Those who have practical acquaintance with the administration, as distinguished from the theory, of income-tax will certainly not agree with the statement that it is administered with a *minimum of friction*, and, judging from the cases of fraud and evasion that have been cited, it is doubtful if a *maximum of result* is ever attained.

Until the application of income-tax burdens is effected upon an equitable and graduated basis, and the principles of scientific accounting are properly recognised and accepted by Revenue officials, it is a foregone conclusion that the desideratum of a *maximum of result with a minimum of friction* will not, and cannot, be realised.

The Chairman invited discussion.

Mr. H. Lanham, A.C.A., said: In the short time he was able to stay that night he proposed to put forward some points of criticism of the paper just read. But first of all he would say how extremely grateful they all were to Mr. Dodd, more particularly as he had lately taken on the Chairmanship of the Working Union—a position which was no sinecure, as Mr. Price would tell them were he present. Mr. Dodd had raised a great many points of controversy, and made many statements which were open to discussion. He agreed wholly with Mr. Dodd that the Report was entirely in favour of the officials, and left out the interest of the taxpayer. He had a case a short time ago where the Surveyor of Taxes had pressed for accounts. The taxpayer in question sent for the assistance of his firm. It was a bad case. The taxpayer ought to have paid on thousands more, and he appealed to the accountant to get him out of the trouble. The Surveyor took three years' figures, and his client was willing to have the money paid. But the Surveyor went out of his way to talk about suing in the High Court and getting a fine of £50 in addition to the taxes due. To have made such a statement was absolutely wrong. No Surveyor should be allowed to so trade on the possible ignorance of those who saw him. He made it his duty to report the matter to the authorities, notwithstanding that the case was undoubtedly a bad one against his client. But the taxpayer had attended to give the required figures, and was making an amended return, and the Surveyor had no right to talk about suing on a false return. It was only done to try and get a little more credit on reporting to Somerset House that he had got back two or three hundred pounds, and the Surveyor was not going on legal lines himself. One went before the Income-tax Surveyor, and possibly assisted him, but he did not trouble to tell them what they need not put down in making the returns. Thus it was that friction arose. The suggestion of the Report that it was generally better to pay on the yearly income sounded very nice, but he thought a three years' average was a better course, although it might upset the calculation of the Chancellor of the Exchequer. On the one system a man paid on his losses, on the other system he did not. On the question of obsolete machinery he thought traders would be unanimous in the opinion that machinery needed replacing every five years. They were allowed to write something off on this head, but the average taxpayer knew

nothing much about it, and the Surveyor never pointed out these things.

Mr. Charles Comins, F.C.A., thanked Mr. Dodd for his able address on a very important subject. There could be no more important subject for Chartered Accountants to consider than this, especially now they had this Report of the Departmental Committee. He was especially thankful for the favour of being there to listen to the address, because he had to deal with the subject on the 22nd of the present month. He had been reading up and preparing for the occasion. It was refreshing to him to hear that Mr. Dodd agreed with his main conclusions upon the findings of the Report, and this not for any personal reason, but because he had been disappointed to find that the two Chartered Accountants who did give evidence before the Committee had gone over—lock, stock, and barrel—to the side of the officials of the Inland Revenue. There was no question that the Report was drawn up with a view to favouring the Inland Revenue and the official view of the question of the collection and the assessment of the income-tax. With regard to the question of Fraud and Evasion, it was his own opinion that there was little of that at the present time. Mr. Dodd had prepared some remarkable figures showing how little was allowed for depreciation of plant and machinery. He thought he had even under-estimated the actual amount which should be allowed, but, accepting those figures, they saw that the Revenue got more than they ought, under that head at any rate. He also felt certain that, whereas a number of instances were given of cases of evasion, they could also show instances of people paying for many years income-tax they ought not. And, taking one with another, he doubted very much indeed the cry of evasion. He had taken the result of the collection of taxes from the public accounts for the last ten years, and he saw no ground whatever for saying there was fraud and evasion. Ten years ago, in 1894-5, the produce of a penny tax was under two million pounds, and that had steadily increased since that time until the result amounted to over two and a-half millions on the penny tax. At a shilling in the pound thirty millions of money was raised at the present time. Ten years ago the amount would have been about £24,000,000. They would hardly expect to see this regular increase of the tax per penny if fraud and evasion were seriously practised. The Report only reflected the official mind. The authorities, he thought, were over-reaching and too grasping in the collection and assessment of taxes. At one time they used to speak of nothing else but the courteous and fair treatment they received from the Surveyor. They could have said that five years ago, but nowadays they could not so thoroughly endorse that statement. The last speaker had instanced the unfair treatment of the ignorant. No doubt, so far as accountants

were concerned, that would redound to their interest. People should not put their figures before the Surveyor without professional assistance. They owed a debt of gratitude to Mr. Dodd for bringing this subject before them. The students should have knowledge of the subject. It would be of great assistance to them in their private life, as well as in their professional practice. One main official suggestion which the Report made was that Section 133 should be done away with. But it had not come to a conclusion as to whether the average system should be adopted or the system of the single-year assessment. That was left open, without expression of opinion, although the Report rather seemed to favour the single-year system. It was satisfactory so far that the officials had not prevailed upon the members of the Committee, however, to recommend it. But the most extraordinary part of the business was that they had prevailed upon the Committee to propose that Section 133 should be amended. It would be a most unfair thing that the average system should remain without the advantage of Section 133. Why was the suggestion made entirely from the Inland Revenue point of view? If they came to examine carefully the reasons put forward by the public officials for doing away with the section it appeared to be to save themselves trouble. He referred his listeners to page 18 of the Report. It was to save strain on the mental powers of the officers of the department. (Laughter.) What were they paid for but this? One of their duties was to relieve taxpayers from over-assessment. What about the poor trader whose business was falling off? Was there to be no consideration for such—only relief for Somerset House officials who felt the mental strain? An attempt had been made to bring the single-year system about, on the ground that it would assist both taxpayer and Revenue. He denied that it would assist the taxpayer generally. It might a few. He hoped they would never be led away by the arguments thrown out in the Report. The advantages to be claimed for the proposals from the taxpayer's point of view were illusory. Why their representatives before the Committee had gone over to the officials of the Department and against their clients—the taxpayers in general—he could not understand. It was their duty to protect the taxpayers. The Inland Revenue were well represented by the Surveyors and their officials. The question of Depreciation was a large one, which Mr. Dodd had dealt with thoroughly. If ever the Report was to be considered in Parliament he hoped they would oppose it—as professional men and as citizens—especially the suggested repeal of Section 133 while the average system held good. On the question of Penalties, the recommendations seemed mostly on the line of over-pressing the taxpayer to the point of extortion. And before possibly gibbeting the taxpayer who made a wrong return they needed a law requiring the

keeping of books of trading. Such a law should be passed before they allowed the penalties to be increased as suggested. He concluded by moving a vote of thanks to Mr. Dodd.

Mr. S. Leah seconded, and

Mr. E. J. Tubbs advocated the assessment of wages paid to employees in the general return of the firm or company with whom they were employed.

Mr. H. Barham, A.C.A., supported the vote of thanks to the opener of the discussion. He thought some of the suggestions thrown out on this question were somewhat impracticable. He agreed that accounts should be certified by Chartered Accountants. The whole Report savoured somewhat of partiality. They were not much more forward now they had got the Report, except perhaps in some minor details. The most important conclusion was that all should be bound to send in a return. A great number of people were glad to pay on £1,000 who should pay on £1,500. There were many people who would not put their name to a return they were bound to make if it were false, and there would be an increase of revenue and less friction if the system were adopted. He complimented Mr. Dodd on the lucidity of his address and the interest he had imparted to it.

The Chairman, in closing the discussion, said they had all listened with considerable interest to the paper, which, like an egg, was full of meat. He hoped they would have an early opportunity of seeing copies of it, and of studying it in connection with the law of the subject and the Report of the Committee. He had not yet had an opportunity of seeing the paper, and did not feel himself competent to criticise it at any length. He should adopt the advice he had given them, and take the paper home and read it quietly with the Report. There were one or two points he would refer to. In his judgment it was a most unfortunate Report that had been prepared by the Departmental Committee, and the effect of it, if adopted, would be very far-reaching. It would have been far better—and he hoped it would come about—had the question been dealt with by a Royal Commission composed of gentlemen not under the influence of any one particular department. The income-tax was essentially a war tax, and never intended as a permanent burden on the people. But it was a very handy method by which the Chancellor of the Exchequer could raise two and a-half millions by putting on a penny, so it was that it had never been repealed. It was also a class tax, and not generally borne by the masses. As the franchise increased, so the Chancellor of the Exchequer was less disinclined to take this burden off the classes. The Committee should have taken into consideration the apportionment of the burden. At present it pressed very unequally. One man with an income of £1,000 had a wife and half-a-dozen children; another man

with the same income was single—his hat covered all his responsibilities. Again, a man living on money invested paid the same as the man living by his brains. No one seemed to have considered that brains were subject to depreciation. The one died and his income continued, the other died and the income fell off with his decease. Then there was the alien. He was a great offender in the matter of evasion. He came to this country, did well, and went away. He did not agree with the gentleman who thought there was little evasion. His opinion was that if all did their duty and paid they would find great relief generally in the amount of the tax—that it would be nearer 6d. all round than 1s. on some. As to the punishment to be meted out for fraudulent returns, he thought the offence of signing a fraudulent return was regarded as equal to the crime of perjury. But he did not believe there had been one prosecution of the kind since the institution of the tax. He held that the man who made a false return was engaged in crime far worse than the man who stole a loaf of bread for his starving family. The falsifier of returns was robbing his neighbours. Another point worthy of consideration was the question of the income-tax in the Colonies. Our large Empire was built up by home money, and the Britisher should only be called upon to pay once. But often he was mulcted at home and in the Colonies also. He put the vote of thanks to the lecturer and declared it unanimously passed.

Mr. Dodd thanked those present for the hearty way in which they had received the kindly vote of thanks, so well proposed and supported. He had given considerable attention to the question in preparing the address, and he thanked them very much for the offer they made that had given him this opportunity. In endeavouring to educate others one educated oneself. The subject was dry, but not without interest. He thought the statement in the Report as to "a minimum of friction with a maximum of results" was at variance with the evidence given in the Appendix. He himself had heard of no prosecution for perjury in connection with making the income-tax return. The Report quoted a case of £6,000 being returned for £60,000, but there appeared to have been no prosecution. The apportionment of the burden was deserving of more consideration than the whole of the items mentioned in the Report. He impressed upon his listeners that the Surveyors of Taxes had nothing to do with the Balance Sheet, although they always asked for it. He recommended accountants to ask the Surveyor to refer to the section of the Act upon which he called for this. He moved a vote of thanks to the Chairman. Such a motion needed no seconder, so he would put the vote to the meeting.

The motion was passed with acclamation.

The Chairman acknowledged the compliment. He was always pleased at any time to do anything he could for the

Society. He regretted now having to announce the death of Mr. P. C. Plowman, a member of the Committee, the deceased passed away on the 27th of October. He moved a vote of condolence with the family. That needed no seconder.

The vote was passed.

The Chairman said Mr. Cole would convey the vote to the family of the late Mr. Plowman.

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## The Institute of Bankers.

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### The Joint Stock Companies Acts, 1862-1900, in Relation to Banking.

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By J. M. HENDERSON, Esq., Barrister-at-Law, F.C.A.

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LECTURE delivered before the above Institute on Wednesday, November 15th 1905.

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The benefits of the Companies Acts, 1862 to 1900, have been adopted and developed to an extent which could hardly have been contemplated when the 1862 Act was passed, and the great commercial progress of the nation has been accompanied by the creation of a vast number of limited liability companies, the capital of which, in one shape or another, has offered a wide field for investment. During the same period the system of banking has also expanded. Most banks have availed themselves of the benefits of limited liability under the Act of 1879, but, more important still, the area of their operations has greatly extended. The great increase of wealth has placed at their disposal enormous funds for investment, and, in seeking investment for their funds, the various debentures, stocks, and shares of limited liability companies are daily offered to them; and it is in dealing with such companies, either as the bankers of the company itself, or in the acceptance or rejection of the debentures, stocks, and shares of such companies, that a general knowledge of the law affecting them is necessary.

First of all, it should be borne in mind that a company formed under the Companies Acts has not the common law rights of private individuals, or even of a corporation formed under a Royal Charter. The private individual can deal with his property and do such legal acts as he thinks fit, and so, almost to a like extent, can a corporation under a Royal Charter. Not so a company formed under the Companies Acts. They are incorporated only for the objects and purposes expressed in their memorandum of association, which is their fundamental and (except in certain specified particulars) their unalterable law.



Before a company is actually incorporated and registered there is generally a preliminary contract for the purchase of some specified business, undertaking, property, patent, concession, mine, &c. Such contract must be properly ratified after incorporation, otherwise it is void, because a company cannot be bound by a contract made before its incorporation.

The foundation of a limited liability company is its memorandum of association.

The memorandum sets forth the following:—

- (1) The name of the proposed company with the word "limited" added.
- (2) The part of the United Kingdom in which the registered office of the company is proposed to be situated.
- (3) The objects for which it is to be established.
- (4) Declaration that the liability of their members is limited.
- (5) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount.

Subject to the following regulations:—

- (1) That no subscriber shall take less than one share.
- (2) That each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

In defining the objects of the company, care is taken to make them as wide as possible

The memorandum fixes the constitution of the company, and beyond that the company cannot go, no matter what the articles of association may say, and even if every one of the shareholders gives his consent. The leading authority on the point is the well-known case, *Ashbury Railway Wagon Co. v. Riche*.

The memorandum in that case specified the objects of the company to be, "To make, sell, or lend on hire railway carriages and wagons, and all kinds of railway plant, fittings and machinery, and rolling stock, &c." The directors, however, purchased a concession to build railways in Belgium, no doubt with the laudable object of finding additional outlets for their wagons, and this was challenged. Meetings of shareholders were held, and it was contended that the shareholders had approved, but the House of Lords held that the directors had acted *ultra vires*, and that it made no difference even if every individual shareholder had assented.

The Lord Chancellor said: "The memorandum of association is, under the Act, their fundamental and, except in certain specific cases, their unalterable law."

Further, a company formed for some special object, although it may have other objects ancillary to the main one, yet, if the main one fails, the Court may order the company to be wound up, its principal object having failed.

This was done in the case of the German Date Coffee Company, Lim.

There the memorandum stated the object of the company to be: "For the working a German patent for making coffee from dates," and the memorandum also gave amongst their objects the acquiring of other inventions for similar purposes, and to import and export all descriptions of produce for the purposes of food, &c. &c.

The company failed to acquire the German patent, and although they purchased a Swedish patent and were satisfied that they could do a profitable business, yet the Court held that the company had failed in their principal object, the others being ancillary only, and ordered the company to be wound up.

The Act of 1890, called "The Companies Memorandum of Association Act," gave powers to limited liability companies so amend their memorandum in certain defined particulars and in certain terms, *inter alia*, the approval of the Court, the proper resolutions of the shareholders, the payment of all creditors, or the satisfying the Court that they had been provided for. The Act only sanctioned such alterations as may enable the company—

- (a) To carry on its business more economically;
- (b) To attain its main purpose by new or improved means;
- (c) To enlarge or change the local area of its operations;
- (d) To carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company;
- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

As above stated, the memorandum specifies the capital of the company and how it is to be divided, and the Court will not sanction any alteration of the rights of the various stock and shareholders.

In the case of a company where the capital consisted of preference shares, ordinary, and founders' shares, the founders' shares were offered to be surrendered at a nominal price to the company, and although the preference and ordinary shareholders passed a unanimous resolution in favour of the transaction, it could not be given effect to. Practically it amounts to this, that if a company desires to alter its memorandum of association in any matter other

than those specified in the Act, the Court will not sanction the alteration, and the only course is to wind up and reconstruct.

The Act of 1867 gave powers to a limited liability company to reduce its capital to the extent of such part of it as had been lost or was unnecessary, provided the sanction of the Court were obtained, proper resolutions of the shareholders passed, and all creditors paid or provided for to the satisfaction of the Court, the company thereafter to add to its name the words "and reduced."

#### *Articles of Association.*

The memorandum of association is the constitution of the company, and the articles of association are its *Regulations*.

These articles may be, and generally are, prepared and registered at the same time as the memorandum of association, but if no such special articles are prepared, then the Act of 1862 provides that a certain set of regulations known as Table "A" shall be the regulations.

Sometimes the regulations of Table "A" are used, with certain modifications, but in the great majority of cases special articles are prepared.

These must be consistent with the memorandum of association. If not, the memorandum will prevail.

The articles regulate the rights of the members *inter se*, and every member is affected with full knowledge of their contents.

These regulations relate to shares and share certificates, mode of transfer, calls, forfeiture, surrender, increase or reduction of capital, borrowing powers, general meetings and proceedings thereat, directors and their qualifications and directors' powers and disqualification, rotation, managing directors, directors' proceedings, the secretary, seal, dividends, reserve, accounts, audit, notices, arbitration, winding up, and other provisions to meet special cases.

By Section 50 of the Act of 1862 a company can, by special resolution (but subject to provisions of the Act and to the conditions contained in the memorandum of association), alter all or any of the articles and make new ones, which shall be of the same validity as the original ones.

This right to alter its regulations cannot be taken away. Even by the shareholders themselves any resolution to that effect would be *ultra vires*.

The articles which chiefly concern bankers are the powers of the directors to borrow and to charge the property of the company as security for advances.

These powers are generally given in the memorandum, and more particularly defined in the articles, and where this is the case, a banker should have no difficulty in seeing whether any proposed borrowing is within the powers so given.

Where the powers are not defined, a right to borrow for the ordinary purposes of the company is presumed.

That the borrowing is for the purposes of the ordinary business of the company will be presumed unless, by some means or other, it comes to the knowledge of the lender that it is for some other purpose outside the ordinary business of the company. In the case of a company having mortgage debentures, the freehold and leasehold property (including fixed plant) would most probably be conveyed and assigned to the trustees for the debenture-holders, but as to the other assets, book debts, stock, &c., the charge on the debentures would only be a floating charge, and the company, under the usual terms of a trust deed or debenture, would not be precluded from charging these for the ordinary purposes of the business.

The capital of a company consists of shares or stocks, and these may be divided into various classes.

#### *Preference Shares.*

The public demand for an investment yielding a moderate dividend with something more of security than an ordinary share has led to the dividing of the capital in a great many limited liability companies into preference and ordinary shares.

Preference shares are generally entitled to preference both as to interest and capital, although there are cases in which they are preferential only as to interest.

Sometimes they are entitled to a fixed interest, and, in addition, to a share of any surplus after providing for a dividend at a fixed rate on the ordinary shares.

As to capital, the meaning of the preference is that, on a sale or winding-up of the property, the holders are entitled to be paid out their capital before the ordinary creditors receive anything.

A question arose, *Birch v. Cropper*, 14 App. cases, in the winding-up of the Bridgwater Navigation Co., as to whether holders of preference shares were entitled to participate in any surplus after paying off all claims and repaying the amounts paid on preference and ordinary shares. The House of Lords held that the surplus was distributable amongst the members of the company, preference and ordinary, not in accordance with the amount paid up, but to the shares held.

Where it is not intended that this privilege should be given, then words would be introduced to shut them out.

Interest on preference shares is either "cumulative" or "non-cumulative," and these terms are now universally used.

Where the interest is cumulative the ordinary shareholders can never obtain a dividend on their shares until all arrears of preferential interest are cleared off.

*Ordinary Shares.*

The position of the ordinary shares will be gathered from what has been said of preference shares. They take, in dividend, what is left over after providing for debenture interest and preference interest, unless there are also founders' shares or deferred shares, or the articles provide for further participation of the preference shares. The rights as to dividends and division of capital on a winding-up should always be clearly defined by the articles.

The term "Deferred" is sometimes applied to ordinary shares. The capital may be divided into preference and deferred shares, or preference and ordinary shares, or preference, ordinary and deferred. Deferred shares are often taken by vendors or promoters, and come after the preference and ordinary shares in such terms as to dividend and distribution as the articles provide.

The articles also provide the voting powers of each class.

*Founders' Shares.*

These are generally few in number and small nominal value, and are created and applied as remuneration to founders or promoters of companies in return for their undertaking to pay the expenses of flotation and guaranteeing the placing of shares, or their services generally. Sometimes the vendor stipulates for part of the consideration being paid in founders' shares. And, again, they are offered to subscribers of ordinary shares, say, one founders' share for every hundred ordinary shares subscribed.

Founders' shares are usually given by the memorandum and articles a right to a share, say, one-half or one-third of all surplus profits after a fixed dividend of, say, six per cent. has been paid to the ordinary shareholders, and, as the founders' shares are generally not more than one-tenth of the other shares, their share of the surplus profits of a successful company would be very large.

Suppose a company with 200,000 ordinary shares and 10,000 founders', all £1 each, and the profit divisible equally between the ordinary shareholders and the founders' shareholders, after the payment of a dividend of 6 per cent. to the former. With £20,000 to be divided, the founders' shares would get 40 per cent. as compared with 8 per cent. on the ordinary shares:—

6 per cent. on the £200,000 Ordinary	=	£12,000
40 per cent. on £10,000 Founders' ..	=	4,000
2 per cent. to Ordinary .. .. .	=	4,000
		<hr/>
		£20,000

In many cases these shares have reached a very high value. They are, however, a very unsatisfactory security. Where large amounts are paid to them in dividends there is always the danger of discontent amongst the other shareholders, and efforts to get rid of them are constant, and unless the memo-

randum and articles provide for giving them a vote proportionate to their interest in the profits of the company and the like proportion of division of assets in a winding-up, the ordinary shareholders will endeavour to reconstruct and so get rid of them.

"Management" shares are practically of the same class as founders' shares. They are small in proportion to the other capital of the company, and are generally entitled to a large share of the surplus profits after providing for the dividends at a fixed rate to the other class or classes of shareholders. The idea is to give managers a great interest in making the business prosperous, but, as a matter of practice, these shares generally find their way into the hands of others.

*Debentures.*

There is an idea very prevalent that the term "debenture" implies a security, but this is not so. A debenture may be what is legally known as a "naked" debenture, and is nothing more than a bond acknowledging a debt, and, signed and sealed by the company in proper form, is simply a specialty debt, and gives the holder no security over the property of the company. The holder can only claim against the company as an ordinary creditor. As a general rule, however, debentures contain a charge on the undertaking and property of the company.

They fix a time for the repayment at, say, five, ten, or fifteen years from the date of issue.

They specify the rate of interest and the dates of payment, and the interest is paid by warrant or coupons issued with the debenture. Debenture stock is substantially the same as debentures, the former is simply a consolidation for the sake of convenience.

Both debentures and debenture stock are usually secured by trust deed.

The trust deed generally conveys all freehold property, assigns all leasehold property and all other property and assets of the undertaking to trustee or trustees upon trust for the debenture-holders, or the debenture stock-holders, by way of floating security for the due payment of the debentures' principal at the due date (and interest in the meantime at the rates specified).

The trust deed in the case of debenture stock is the instrument which constitutes the stock.

The trust deed contains certain stipulations by the company and specifies certain events in which the trustees may exercise their powers of entering into possession and realising the security for the purpose of paying the principal debt secured and interest and costs.

A trust deed, although not absolutely necessary, has several advantages. It concentrates the power of the debenture-holders into the hands of one or two, and they

are charged with the duty of protecting the debenture-holders' security, whereas if there is no trust deed it is left to the individual debenture-holders to take action.

Further, the trustees under the deed can be empowered to do a variety of things at the request or with the concurrence of the company; and the company can be bound to do many things, such as repair, insure, and otherwise protect the property, or, failing their so doing, the trustees may do these things at the company's expense.

Further, the trustees can be and generally are empowered to take possession on default, or to appoint a receiver to take possession of the property on their behalf and realise the assets without the intervention of the Court.

This could not be done by the individual debenture-holder, or by any group, without going to the Court.

The trust deed is also desirable from the company's own point of view, because it has the effect of making the security more attractive.

There are, of course, companies who are in such a strong financial position that they do not require to offer the additional security of a trust deed to subscribers.

In dealing with debentures and debenture stock, there are several important points to be considered.

First of all it is necessary to ascertain whether the directors who issue the debentures are empowered by the memorandum and articles to do so; and here it is most necessary to point out that "persons dealing with joint-stock companies are bound to look at what one may call 'the outside position of the company—that is to say, they must see that all the acts which the company is purporting to do are acts within the general authority of the company, and if those public documents which everyone has a right to refer to disclose any infirmity in their action, they take the consequences of dealing with a joint-stock company which has apparently exceeded its authority.'" Lord Halsbury, L.C., *County of Gloucester Bank v. Rudey*.

This constructive notice is far-reaching. It means that anyone dealing with a joint-stock company is fixed with notice of the contents of its memorandum and articles of association, and also with knowledge of the contents of the Acts of Parliament. Thus, if the memorandum and articles provide that the directors may borrow or raise money on debentures or mortgage to an amount not exceeding, say, £100,000, a subscriber for debentures must satisfy himself that the proposed debenture is within the limit, for, should it exceed the limit, his debenture would be void and worthless.

But if, on the other hand, the memorandum and articles stipulate that the directors shall not borrow and pledge the securities of the company beyond £100,000, unless with the sanction of a general meeting of the shareholders, and the

directors do exceed the £100,000 without having obtained that sanction, or the proceedings at the meeting, when called, have been irregular, then the holder or holders of the excess amount are protected under what is known as the rule in *Royal British Bank v. Turquand*, 6 Ex. B., 327.

There, the directors did not call the meeting necessary to sanction the excess, but Lord Hatherly said that persons dealing with the company, though they are bound to read the Act and registered documents, and to see that the proposed dealing is not inconsistent therewith, are not bound to do more. They need not inquire into the "indoor" management, but were entitled to assume that what was necessary to be done had been done.

Here again, however, this rule only applies where the parties dealing with the company are honestly ignorant of the irregularity. A person who has notice of the irregularity is not protected (*Howard v. Patent Ivory Co.*, 38 Ch. D., 156).

Here, the directors had power to borrow in excess of £1,000, with the assent of a general meeting. Without first obtaining that assent, they issued debentures for £2,500 to themselves for money lent to the company; it was held that, as they knew that the internal arrangements had not been complied with, the debentures could only be good for £1,000.

There is another matter with regard to debentures to which I desire to call particular attention, viz., debentures of a joint-stock company, registered in England with property in Scotland or abroad. In England, a debenture carries a floating security on all assets, but if part or the whole of the property is in Scotland, a different law obtains.

Where securities are heritable or long leases, registration in Sasine's Register is required to complete the securities; if obligations, intimation is necessary; if uncalled capital, intimation to the shareholders; if ordinary leases, possession must follow; if moveables, delivery must be got; and if ships, registration in the Shipping Register is necessary.

A floating security on the undertaking, or the property or assets of a company registered in Scotland, is ineffectual.

If the company be English, but the property situated in Scotland, and, again, if the company be Scotch, but the property in England, *quid juris*? It is thought that the *lex rei sitæ* would rule, and the security would be ineffectual in the former, but effectual in the latter (*Queensland, &c.*, Co. (1891), 1 Ch., 536, (1892), 1 Ch., 219, 15 R., 935).

In many foreign countries the local creditors are preferred before foreign creditors, even where the foreign creditor holds a floating or even a registered charge.

Prior to the 1900 Act a company was bound to keep at its registered office a Register of Charges (mortgages or debentures), &c., but no one was entitled to inspect same except a creditor; so that, instead of being able to find out

whether credit should be given or not, the credit had first to be given before a creditor could discover whether he ought to have given credit at all. This, of course, was too late. There was no public registration.

The Act of 1900, however, provides for the registration in the Public Registry of all mortgages and charges on the company's property. The Registrar issues a certificate of the registration, and a copy of such certificate must be endorsed on every debenture or certificate of debenture stock.

The Register is open to the inspection of anyone on payment of a fee not exceeding 1s. for each inspection.

#### *Flotation.*

Having settled the contracts, the memorandum and articles, the question of flotation arises.

There are various methods :—

- (1) If the business to be converted is a well-known one, or if the parties concerned with the new company are of high financial standing, or the prospects very attractive, the simple issue of an advertisement and prospectus, without any underwriting or the intervention of a promoter, may be sufficient to obtain the subscription. These are, however, very few.
- (2) By underwriting direct, without the assistance of a promoter.
- (3) By the assistance of a promoter.

Before the 1900 Act it was very doubtful whether a company could legally pay, out of its capital, a commission for underwriting shares in its own capital.

The company could, out of profits, or out of premiums on its own shares or other assets not being capital, pay such commission. It could pay out of capital or profits a commission for underwriting its own debentures or the shares and debentures of other companies owned by it.

The company could give a call on its own shares at par or a premium for a consideration.

It was illegal for a company indirectly to pay out of capital commission for underwriting shares in its capital, by agreeing to pay a price for property which the directors knew was fixed so as to cover underwriting. This, however, was constantly done, but the directors were not supposed to know.

Sometimes it was arranged to pay the underwriting commission out of Reserve Funds, or to give a call on the unissued shares or part of them for a fixed period at par on a fixed premium.

The Act of 1900 altered all this.

A company can, under certain circumstances, pay an underwriting commission out of its own capital.

Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe absolutely or conditionally for any shares in the company.

Then follows the condition :—

"If the payment of the commission and the amount or rate per cent. of the commission paid, or agreed to be paid, are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid, or agreed to be paid, does not exceed the amount or rate so authorised. Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person, in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company. Whether the shares or money be so applied by being added to the purchase price of any property acquired by the company, or the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase price or contract price, or otherwise.

But nothing in this section shall affect the power of any company to pay such brokerage as it has hitherto been lawful for a company to pay."

#### *Prospectus.*

The form or forms of prospectuses prior to the Act of 1900 were very numerous and varied, but there was always a more or less marked similarity.

They stated the authorised capital of the company and the nature of it; that is, either preference shares, or ordinary shares, or deferred shares, either or all.

The amount of the proposed issue, the dates of payment of subscriptions, the names and addresses of the directors, bankers, solicitors, auditors, secretary, and any other officers.

If at some time there was an issue of debentures or debenture stock, the names and addresses of the trustees for the debenture-holders.

Then followed a statement of the objects for which the company was formed, and the property or assets it proposed to acquire, and the benefits to arise from the business of the company to the shareholders.

An estimate of the profits to be made.

If a going concern, then a certificate of a Chartered Accountant of the profits of the past few years, and a certificate of valuers as to the value of the property to be taken over. Or, if the company was formed for the development of some patent process, then a certificate from some

eminent counsel or patent agents as to the validity of the patents, and so forth, according to the nature of the proposed business. If mines, then the reports of survey of the mining property.

Then followed the dates of the contracts entered into and the parties, and a statement that these contracts, together with the memorandum and articles of association, could be inspected at the office of the solicitors, and, of late years, a statement that "there are various other contracts between the promoters or the vendors and others, and there are also various other contracts in connection with the business, which may constitute contracts within the meaning of Section 38 of the Companies Act of 1867."

"Applicants for shares will therefore be affected with notice of the existence of such arrangements and contracts, and will be deemed to have waived the insertion of the dates and names of parties thereto, and, in order to prevent any questions, must accept the above statement as a sufficient compliance with the requirements of the said section."

This last was known as the waiver clause, and it is a very extraordinary thing that the validity of this clause was never tested at law, seeing that, in the opinion of some of the best company lawyers, the clause, at all events as generally drawn, was ineffectual.

The 38th section of the Act of 1867 was meant to be a protection to the investor, but it has been found to be, in practice, of very limited use in that direction.

Prospectuses are advertised and posted far and wide, and the time for subscriptions limited generally to a few days, so that it was, and is, impracticable for would-be investors living at any distance, or even in the place of issue itself, to examine and master the details of such agreements. Assume that 10,000 prospectuses are issued (they sometimes amount to hundreds of thousands), how is it possible for a tenth of these to become acquainted with the contents of the agreements?

Further, to stimulate prompt application, promoters or vendors, in the past fifteen or twenty years, have arranged for dealings in the shares the moment the prospectus is issued, and even, in some cases, before the issue.

By arrangement with some members of the Stock Exchange a market has been created and the shares are quoted at a premium. In some few cases the premium was a genuine one, but in the great majority of cases it was not.

It will readily be understood that a promoter or vendor making a large profit could afford to sacrifice some of that profit if, by so doing, he could secure the subscription of the issue, and he and those associated with him gave buying orders at a premium for a few thousand shares, having previously arranged with the dealers to let them have these

shares, and any they might sell to others, on allotment. And so the average public, seeing the shares at a premium, and believing it genuine, subscribed without troubling to inspect the agreements, or even, I fear, carefully reading the prospectus, and they very often found that the moment the allotment was made the premium disappeared, and they were fixed with shares and the liability thereon, more or less valuable, often worthless, without any hope of retreat.

The Act of 1900 was intended to put a stop to the many abuses which had grown up around the 1862 and subsequent Acts, and it contains some very drastic clauses, designed to protect the investing public as well as the general public.

Commencing in January 1901 any prospectus inviting subscriptions from the public, either for debentures, debenture stock, shares, or stock, must contain a number of specific particulars never required before.

These you will find in Mr. Scully's lecture, page 105, Journal of Institute, vol. 22.

You will observe that if there are any founders' or management shares the number and the nature and extent of their interest in the profits and assets of the company must be set out.

The names, description, and addresses of the directors, and their qualification and remuneration.

The minimum subscription on which the directors may proceed to allot, and if there has been any previous offer of shares the prospectus must state the amount so previously offered and the allotment actually made, and the amount paid up.

The number and amount of shares and debentures issued or agreed to be issued as fully paid, or partly paid, otherwise than by cash, and the consideration for which such shares or debentures have been issued or are proposed to be issued.

Names and addresses of vendors of any property purchased or proposed to be purchased by the company which is to be paid for out of the issue partly or wholly, and the amount payable in cash, shares, or debentures to the vendor or vendors.

The amount paid or payable in cash, shares, or debentures of any such property, specifying the amount payable for goodwill.

The amount paid or payable as commission for subscribing or procuring subscription for any shares, and the rate of such commission.

The amount paid or intended to be paid to any promoter, and consideration for such payment.

The dates and parties to every material contract, and a reasonable time and place for inspection.

The names and addresses of the auditors.

Full particulars of the nature and extent of the interest of every director in the promotion or in the property proposed to be acquired, with a statement of all sums paid, or agreed to be paid, to him in cash or shares by any person, either to qualify him as director or otherwise for services rendered by him in connection with the formation of the company.

Where the prospectus is issued more than a year after the company is entitled to commence business, the memorandum of association, the qualification, remuneration, and interest of directors, the names and addresses and descriptions, the amount of preliminary expenses need not be published, and material contracts are limited to a period of two years immediately preceding the publication of the prospectus.

Any waiver clause is void.

For newspaper advertisement of prospectus, the memorandum and signatures, and the number of shares subscribed for by the signatories, may be omitted.

The term "prospectus" applies to any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase, any shares, or debentures, or debenture stock of a company.

Further, a director must now sign and register a consent in writing to act as director, and must either sign the memorandum of association for his qualification shares at least, or sign and file with the Registrar a contract in writing to take and pay for his qualification shares.

There then is the provision as to commencing business. Where the company does not offer its shares to the public it becomes entitled to commence business immediately after its incorporation.

A company offering its shares shall not commence business unless shares held subject to the payment of the whole amount thereof on allotment have been allotted to an amount not less in the whole than the minimum subscription, and every director has paid the application and allotment on his qualification shares.

And a statutory declaration by the secretary or one of the directors in the prescribed form that these conditions have been complied with is filed with the Registrar.

Anyone responsible for the contravention of this section is liable to a fine of £50 a day.

The above provisions are excellent so far as they go, and there is no doubt that they have had a salutary effect in stopping the flotation of many bogus companies since 1901.

The company promoter, however, has already found a means of minimising the salutary effect of some of its provisions.

Instance the case of the amount paid or intended to be paid as commission for underwriting, and the amount paid or intended to be paid to any promoter.

The names of promoter or underwriters are covered up by incorporating a small limited liability company, which is put forward as the underwriter, another as vendor or promoter. There is no public issue of these subsidiary companies, and the shares are merely nominal and held by the promoter and his clerks.

As to the minimum subscription, that, again, is often provided for by subscriptions from clerks or friends of the promoters, or by some company similarly created to the promoting and underwriting companies.

The amount payable on application and allotment need not be large, and if a promoter or vendor is to receive a large sum rather than let the flotation fail for a much smaller sum, he will so arrange it.

The cost of floating any company has become heavier of late years, and this has a very important bearing on the flotation of limited liability companies.

The stamps and fees are heavier, the cost of advertisement is heavier, owing, in some degree, to the increased particulars which the 1900 Act requires, and also to the fact that for many years a number of companies have been floated on the public, which companies never had any elements of success in them, some utterly fraudulent, and some again so over capitalised that where they have yielded results and dividends they have fallen far short of the promises held out, and the shares are so depreciated in the market that promoters require to cast their net ever so much wider every year, and to offer more attractive terms to subscribers. Vendors or promoters have therefore to face a considerable outlay if, as is generally the case, they pay the costs up to the date of allotment.

The consequence is that recourse is had more and more to the system of underwriting, which again adds to the cost of flotation, the underwriter receiving generally 5 per cent. to 10 per cent. commission.

Take the case of a company with £200,000 capital, the cost of floating and underwriting would be anything from £10,000 to £20,000.

The promoter's profit would, in such a case, be not less than a further 10 per cent. to 20 per cent., so that from £20,000 to £40,000, or one-tenth to one-fifth of the capital is unremunerative from the commencement. This is placing the figures on a moderate scale. Of course, there are many businesses which are more or less known to the public that could be incorporated and floated for a very much less sum, say, £10,000 for a £200,000 company, but then they would dispense with the promoter.

The case of corporation stocks, foreign loans, railway issues, stand on a somewhat different footing, as the

amount is generally large and no promoter is necessary. So that the cost of issue, or the sum issued, is relatively more or less trifling, but in the case of the ordinary company, incorporated and floated through the medium of a promoter, the costs and stamps of registration, advertising, underwriting, and issue prospectus, and the stamp duty on conveyance of property, and the general charges added to the promoters' profits, are such as to severely handicap any company of moderate capital from the very first.

In mining adventures, exploration companies, concession companies, the speculative element is dominant, and the inducement is a possible great profit, and any subscriber knows that he takes the risk of losing his money.

In judging of the ordinary prospectus, the first thing to ascertain is whether there are promoters, and to calculate out the profit they are to receive.

This ought to be able to be done from the contract, although I am bound to say that sometimes it is difficult even for a professional man to do this.

Then the directors will come under consideration and generally the solicitors and auditors.

The banker's name is not of so great importance, because the duty and responsibility of a banker, unless he invites subscriptions, is merely nominal.

In trading companies the accountant's certificate should be considered, and I am sorry to say that in past cases many of these certificates were given without such close study of the position as I think should have been the case. Businesses have been certified to have yielded certain profits in average years. The certificate has been strictly true, but closer examination would in many cases have revealed the fact that the business was a declining one, or that some change had taken place in the nature of the business which, although not then operating, was bound to operate in the coming years.

There may have been some new process, expiry of patents, special trade for the years under review, which was becoming exhausted and could not be expected to continue. Where the accountant's certificate simply says that the profit on an average of the last five years has been so much, without giving details of the years, it is very likely to conceal the fact of a decreasing business. For instance, the profits for the past five years may have been £10,000, £8,000, £7,000, £6,000, and £5,000, in a decreasing scale. The average profit is £7,200, but at the time the prospectus was issued the yearly profit was only £5,000 and manifestly declining.

During the last twenty years, if the certificates of profits given by accountants be taken, it will be found, I believe, that not 25 per cent. of them have been realised by subsequent experience.

It should not be forgotten that valuations by professional or other valuers are generally made on the basis of a going concern, which affords little or no guide to the value on a liquidation.

The prices given for "Goodwill" also have been in very many cases exorbitant.

In an ordinary transfer of a partnership business the goodwill is generally taken at anything from one to four years' purchase, according to the nature of the business—i.e., whether it is more or less personal to the vendor,  $2\frac{1}{2}$  being a very usual figure.

In companies, however, it has been more or less ten years' purchase. The objects of the company, the capabilities of the managers, the prospects of the particular trade will, with any special matters, naturally come under review. Banks' own investments are hardly ever made in new limited liability companies, and so far as investment goes it is only a question of advising customers who may seek advice, as they often do, from their bankers.

In all cases wisdom points to avoidance of any advice in these circumstances.

In his own guidance as to the value of the debentures and shares of such companies, the foregoing suggestion may be of value.

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## The Accountant as an Expert Witness.

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By CLEVELAND F. BACON, LL.B.

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(From the *American Journal of Accountancy*.)

THE accountant, as an expert witness, performs some of his most important functions. In no other phase of his work is he so in touch with the closely related profession of the law; in none is he of greater direct value to his client and to the public. In numberless instances his testimony furnishes the only guide to a correct decision of questions vastly important on account of their magnitude and their effect on hundreds of future cases.

The application to the accountant of the law governing expert testimony is of interest. Initially that law permits no man to testify as an expert upon a subject which has not been reduced approximately to an exact science. It must be governed by recognised rules, to which a reasonably uniform meaning is given by those familiar with them. Following such rules, an existent fact should indicate with reasonable uniformity a certain cause or resultant meaning. In such a situation the expert draws certain conclusions, not always mathematically uniform, but at least with a degree of exactness which permits of a safe reliance. The wide field of purely speculative inquiry, embracing numberless cults, schools of thought



and theories, contains no subject proper for expert testimony; for, no matter how ingenious they may be, they represent only the personal thought of their adherents, and, not being governed by any fixed rules, are not to be considered as sciences. Needless to state, also, many of them are merely the product of irrational conceptions and erroneous premises.

On the other hand, no man may testify as an expert upon matters as to which any ordinary man may be expected to form a reasonably correct conclusion. The subject must be one which can be properly understood only by a person having especial knowledge derived from training and experience. Thus it has been properly held that the speed of a train or wagon, or the competency of a driver, does not permit of expert testimony.

The subject-matter then is liable to two objections: it must not be purely a creation of speculative thought, for upon that topic there are no experts in a legal sense; and it must not be of the kind to be understood by the ordinary man, for upon such there is no need for experts in any sense.

Clearly, in view of the fact that accountancy to-day is peculiarly one of the most complex, definite, and positive of the sciences, the former objection has practically no possible application. Yet in peculiar instances the cases have reminded us of its existence. In a Texas trial the testimony of an expert accountant was rejected because the books as to which he was to testify were not shown to have been kept according to any technical or scientific method.

The second objection has caused some argument in the Courts. It must be remembered at this point that an accountant may be called upon to testify in any one of several capacities; most usually as a person who has examined and knows the contents of books and papers. In these instances the rule of evidence has been frequently invoked, that where the contents of books or documents is in question, the best evidence is the books and documents themselves; that comment or analysis by an individual is but secondary evidence of what an inspection would show to anyone.

Yet Judges all over the country recognise that experts are alone able to arrive at the true meaning of complicated accounts. A dictum in one case was to the effect that, while the books could have been summarised by the Court or jury, "it would have taken an unusual time at the trial to do so; and it is only an incident of everyday practice—to use the assistance of an expert accountant to give the tabulated results." An Arkansas Judge recently mentioned accounting as having "come to be a distinct profession, we might say an exact science, requiring particular adaptation and thorough training on the part of those who would master the subject." Obviously this

view must be only strengthened when the variety of questions involved in books and accounts is considered; it may be as to the presence or absence of certain entries, indications of erasures or alterations, the totals of numerous sets of figures, the relation of one set to others, the meaning to be drawn from them, the accuracy of method involved, or as to any one of numerous other intricate problems. The cases have impliedly recognised that no layman, whether attorney, Court, or jury, is qualified to testify upon such points.

While acting thus in practice they still give in theory tacit recognition to the rule of evidence which has been mentioned; and wherever there has been a demand from either side, the books and other documents have been ordered to be brought into Court and placed in evidence. Without this prerequisite, if the objection be made, no expert may testify upon the points involved. One of the Judges has stated the purpose of these rulings to be that, "either side can have the advantage of such evidence, and can usually come prepared to correct any error of calculation so made." Obviously this is just what the other side cannot do, except in the event of extreme simplicity of the accounts, or the employment of opposing experts. Otherwise the sole purpose of bringing the books into Court would be to furnish material for cross-examination.

The accountant's testimony upon the numerous points involved in his general profession that are not dependent upon particular books or documents, is pure opinion evidence upon a subject clearly suitable for expert testimony. As such, his testimony, on due proof of its materiality and of his qualification, is, of course, admissible.

As is well known, a special rule governs the questions which may be asked of the expert accountant as a witness. This is of interest, for it again emphasises an entirely different distinction between the capacities in which an accountant may testify. He may be questioned merely as an expert who knows the existence or non-existence of certain facts; whether a specified entry be present or absent, the contents of books or documents, the method of accounting employed in a given case, and the usual methods of his profession. Questions on such points are asked directly, and in the usual form. But the accountant is frequently asked for pure opinion evidence, perhaps as to the meaning of certain figures, and the inference to be drawn therefrom where the issue is the liability, negligence, or dishonesty of certain individuals. In the same way a physician gives his opinion as to the probable results of an injury, or an engineer as to the strength or durability of a bridge.

Wherever the accountant is asked for opinion evidence, the general rule of hypothetical questions is involved. Counsel may not ask an opinion based wholly on supposi-

tions not brought forth by the evidence, for that would not be relevant; nor an opinion not predicated upon all the evidence, for that usurps the function of the Court or jury. Questions may be framed, however, upon hypotheses of certain facts. Some of the Federal Courts have held that such facts should embrace all the facts proven in the case. The general doctrine is that such hypothesis need merely include all or a part of such facts as the questioner reasonably assumes to have been proved by previous testimony. A New York case holds that even an error in such an assumption does not render the question objectionable if it be within the possible range of the testimony.

In only one instance has this rule been varied: one of the New Hampshire Courts allowed a direct question to such a witness as to whether a shortage existed in his employer's accounts. This was doubtless on the theory that the question related solely to the existence of a fact; while actually his answer must have been based upon his opinion derived from an inspection of the books. On the other hand, the general doctrine is illustrated; in a Massachusetts case an accountant was forbidden to testify as to his opinion whether the books indicated insolvency. In another instance such a witness was not allowed to offer an opinion as to whether the books in issue were badly kept; yet he might properly have testified directly as to what was the usual and approved method of keeping such books; this would have allowed the jury to draw an intelligent inference as to delinquency in the particular case.

One of the most interesting phases of an accountant's testimony has been found in relation to the fitting compensation for the services of other members of his profession. The witness in such cases obviously offers purely opinion evidence, and hence, as was expressed by dictum in a New York case, he must have a knowledge of the value of such services not possessed by the ordinary man, yet the Court considered this qualification shown by the mere statement of the witness that he was "somewhat" familiar with bookkeeping and accounting, and had "some" knowledge of what the plaintiff had done. To-day, in the advanced state of the accounting profession, it is hardly likely that such meagre qualification would be accepted.

These cases, again, illustrate the rule that the expert witness may not take the case from the jury. In Massachusetts it was held necessary that the books upon which the work was done be brought into Court. The witness was allowed to testify as to what was a fair compensation for similar work, and as to what was the reasonable and usual charge for an accountant's services. He was not permitted to give an opinion upon the value of the particular work in question.

Should an accountant's services be valued in proportion

to the importance of the work, the results to be attained, and the responsibility attached, or simply by the customary rate upon a per diem basis? This question, especially interesting as indicative of professional standard, was inferentially answered by a decision in New York of several years ago. The defendant desired to offer testimony at an expected trial, upon the contents of certain books and accounts covering about one year. These he employed the plaintiff to examine that the latter might be able to furnish the evidence. The trial never occurred, and the plaintiff, of course, was not called upon to testify. Yet in the examination he had spent five evenings and two Sundays, "from two and a-half to four hours daily." Despite the small amount of time involved, the plaintiff's counsel, in the trial Court, succeeded in impressing the jury with the undoubted importance of the work, and the great gain to the defendant which would clearly have accrued from the plaintiff's testimony. Thereupon, imbued with these standards of value, and in the spirit of personal liberality, that august body awarded the plaintiff the sum of \$1,000. The Appellate Court promptly set aside this as excessive, and, in so doing, laid down an important principle as to the value of services, and also drew a sharp distinction between expert accountants and mere bookkeepers as professional men. The Court states that it is "only in cases where professional skill of a high order is employed, requiring much preparation and technical knowledge, that the nature or importance of the controversy, gravity of the matter in hand, or the importance of the results obtained, affect the amount of compensation." Where none but ordinary skill is required, the Court states there should be merely reasonable pay for the time and labour expended, measured by the custom in such matters.

It will be perceived that this is in effect a holding that, as to the services last mentioned, their value to the performer himself is to govern, while payment for the work of the higher nature is to be governed by the value or importance to the client. Further, the Court flatly holds that the plaintiff may not rate his services by the latter standard, for the evidence showed two most significant facts: first, that the plaintiff did not claim to be an expert upon accounting; and, second, that although he valued at so high a rate his Sundays and evenings, yet he was at other times employed as a bookkeeper at \$1,800 per year.

From this it would seem likely that were such services performed to-day by some of the great individual accountants of New York city, the charge, large though it seemed for the actual time expended, might well be sustained by the Court on the ground of the importance of the work, and the very high degree of professional skill brought to it by the performer.

The value of expert testimony disappears unless the witness be properly qualified—unless he be a master of his science at least as to the particular matters in hand. On this point the subject of the cross-examiner's attacks is mainly general professional training and equipment, and properly so, since nothing else so truly shows fitness to cope with the question at issue. No part of this general equipment is more truly indispensable than adequate study by the witness preparatory to entering upon the practice of his life work. Without that the foundation of his equipment may be crumbling and untrustworthy, infesting in such event his entire knowledge with misconception and error.

The accountant's preliminary training can be shown only in one way—by the certificate granted by the State in which he practises. What lawyer or physician would be upheld a moment as an expert if he did not possess a certificate granted by the State as to his preparatory work? Yet the certificate held by the physician, lawyer, and Certified Public Accountant represent exactly the same thing—necessary preliminary study and apprenticeship. Such a certificate is indispensable to members of the first-named profession on the stand, while it simply strengthens the testimony of the accountant. Yet its absolute necessity is recognised by the Courts, one of which stated as to accountants:—"They must have acquired by a course of 'study a knowledge of the system and rules involved, and 'by a course of practice become able to apply them to the 'varied complications of business life.'" It is to be hoped that the time is near when legislation of the Courts will prevent any accounting witness from qualifying without this requisite.

Clearly distinguished, of course, from these three professions are certain other subjects of expert testimony—such as that of real estate methods and values—which are as yet too far removed from the sciences to require any qualification except that derived from experience.

Accountancy, however, is to-day one of the important learned professions—the accuracy and the high sincerity of its practice is in the greatest degree essential to the safety of complicated litigation and to the interests of the business public. The representative of the profession on the witness-stand, as in other phases of his work, should be qualified by proof of his equipment. It is submitted that the certificate of Certified Public Accountants is the most essential single element of such qualification.

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### Personal.

MR. W. SPENCER HAMPSON, of National Bank Chambers, Nelson, N.Z., announces that he has purchased the practice of Mr. S. W. THORNTON, Professional Accountant.

MR. ROBERT SPENCE, F.S.A.A., of 6 Wardrobe Place, Doctors' Commons, London, E.C., announces that he has admitted into partnership Mr. WILLIAM PAYNTER, A.S.A.A., and that the style of the new firm is ROBERT SPENCE & PAYNTER.

MESSRS. J. SHEDDEN & SON of Dudley, announce that they have disposed of their interest in the accountancy business (formerly carried on under the style of SHEDDEN & Co.) to Mr. A. E. PERCY, who has been with them for the past seventeen years.

MR. ALFRED G. PUGH, Chartered Accountant, has opened a branch office at Wynn's Chambers, Colwyn Bay.

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### Meetings for the ensuing Week.

*Monday*—MANCHESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "The Faculty of Commerce: its Interest to Accountants," by Professor S. J. Chapman, M.A. This is a Joint Meeting of the Manchester Society of Chartered Accountants and the Students' Society.

*Wednesday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—Finance Committee, at 12.30 p.m.; Council Meeting, at 2 p.m.

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### Reviews.

#### The Law of Contract.

By MONTAGUE R. EMANUEL, M.A., B.C.L.  
(Of the Inner Temple, Barrister-at-Law.)

London, 1906: Jordan & Sons, Lim. Second Edition.  
Price 10s. net.

It is difficult at this time of day to say anything new on the Law of Contract, and almost equally so to state in a novel way what has been already said about it. Whether it be from the point of view of the practitioner or student the ground is pretty well covered, on the one hand by Anson and Pollock, and the other by Leake, Chitty, and Addison. The work under review bids for the patronage of both classes of readers, and we can only repeat what we have before so often stated in similar cases, that such a book is almost certain to fall short of one of its aims, and frequently of both.

In the present instance we are glad to think that, so far as it is a treatise on the general principles of the Law of Contract, the book—founded, as it appears to be, for the most part on Anson—may prove useful to the student. We can, however, scarcely imagine it being of much assistance

to the practitioner, treating, as it does, those more special branches of Contract Law with which he is mainly concerned—*e.g.*, Sale of Goods, Bills of Exchange, &c.—rather by way of illustrating fundamental principles, than from the practical or business point of view. To render such a book useful to the practitioner, it is essential above all things that the Index be full and well planned, in order to counteract, as far as may be, the too theoretical treatment of the subject in the text. This, unfortunately, is not a feature of the present work. It is, however, possible to criticise the book from another standpoint, *viz.*, as one of a series modelled on some well-known treatises on Company Law, and in this respect the author is to be congratulated on the fidelity with which he has adhered to his model—a fidelity, alas! extended even to the arrangement of the Index.

### Gibson and Weldon's Students' Bankruptcy.

Fifth Edition by

ARTHUR WELDON and H. GIBSON RIVINGTON, M.A.

London, 1906: The Law Notes Publishing Offices.

Price 13s.

This well-known book on Bankruptcy has now attained its fifth edition, and with it we notice a change of authorship, though none in its general and excellent arrangement.

We have long considered it as one of the most readable of students' books, and the new departure in putting the authorities at the foot of the page, instead of incorporating them in the text is a great gain in this respect.

### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Jan. 26th, was 159, *viz.* :—New Bankruptcy Proceedings published in the *London Gazette*, 94; Deeds of Arrangement registered, 65. The respective numbers in the corresponding week of last year were: Bankruptcies, 108; Deeds of Arrangement, 70—total, 178; being a decrease of 19. The total number of commercial failures recorded during the 4 weeks of the present year is 623; the total number recorded in the corresponding 4 weeks of last year was 665, showing a decrease of 42.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Jan. 26th, was 159. The number in the corresponding week of last year was 183, showing a decrease of 24. The total number filed during the 4 weeks of the present year is 542; the total number filed in the corresponding 4 weeks of last year was 610, showing a decrease of 68.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Jan. 26th, amounted to £654,660, by way of addition to £3,101,269, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,731,780, showing a decrease of £1,077,120. The total amount registered during the 4 weeks of the present year was £5,402,394 (in addition to the issues in previous years by the same companies), as compared with £7,193,272 for the corresponding 4 weeks in 1905, showing a decrease of £1,790,878.

### The Profession in Scotland.

#### Personal.

Mr. Thomson Brodie, C.A., and Mr. Andrew C. McMorland, C.A., intimate that they have begun business at 156 St. Vincent Street, Glasgow, under the firm of Brodie & McMorland.

The business of the late Mr. Crawford, Accountant, Ayr, has been acquired by Mr. F. C. Dewar, C.A., Ayr.

#### Obituary.

Information was received in Dundee last week of the death in Johannesburg of Mr. George Gilfillan Vallentine, C.A., a native of Brechin, and intimately known to a wide circle in Dundee. The news was contained in a cablegram received in London, and the young man, it is understood, died from the effects of wounds received in a gun accident. He was the second son of the late ex-Provost Vallentine, Brechin, and served his apprenticeship in the office of Messrs. Moody, Stuart & Robertson, Chartered Accountants, Dundee. On completing his apprenticeship and passing his examinations, deceased proceeded to Brechin, removing afterwards to London. Four months ago he left the Metropolis for Johannesburg. Deceased was about 26 years of age, and was a young man of much promise.

THE CORNHILL MAGAZINE for February contains the customary instalments of "Sir John Constantine," by Mr. A. T. Quiller-Couch, and "Chippinge," by Mr. Stanley J. Weyman. "From a College Window" has for its subject the writing of books. In "Freeman versus Froude" Mr. Andrew Lang writes on an forgotten chapter of historical criticism. A topical dramatic criticism is "Grandeur et Décadence de Bernard Shaw," by "A Young Playgoer." In "George Eliot's Coventry Friends," Mr. Warwick H. Draper preserves a literary memory of the last century, while "Society in the Time of Voltaire," by S. G. Tallentyre, draws a vivid contrast from another period.

## A Rhymed Will.

(From *The Solicitors' Journal*.)

A correspondent has sent us for publication a copy of the following will which is stated to have been actually proved. We alter only the names:—

The Will of [Thomasson Thompson] Esqre  
proved in Doctor's Commons 1802,  
He dying that year.

I [Thomasson Thompson] of Bosworth Park  
Without the aid of scribe or clerk  
Or pettifogger of the law  
Ready to make or find a flaw,  
With haggard phiz and tottering limbs  
With worn out wind, a prey to whims  
With every symptom of decay  
And wearing devilish fast away,  
A stupor stealing both my eyes.  
My worldly goods I thus devise  
To Sister Eleanor of Bourn  
Lest she the fate should too long mourn  
Of her lamented brother dear  
I leave twelve hundred pounds a year  
And on her only do I fix  
To be my sole executrix  
To [Harriet] whose joyless bower  
Ne'er knew of bliss one single hour  
I twelve pence give, far more than due  
To such a curst vexatious shrew  
To dear [Whiteley] faithful friend  
Through all my life's extensive bound  
A worldly sacrifice I doom  
Of bullocks half a hecatomb  
In cash and notes no little sound  
The sum of seventeen thousand pounds  
To younger [Whiteley] firm and true  
Who did what elder could not do  
Patient and watchful to my nod  
And trembling when I said "My G——"  
Of sheep I leave a hundred head  
As good as ever Bakewell bred.  
My pointers, spaniels, guns and stock  
By Egg, by Manton and by Nock.  
Unto the Butler I resign  
My stock of every sort of wine,  
Puncheons, as tight as any drum,  
Well filled with brandy, gin or rum  
Pipes, gingers, glasses, everything  
That makes the joyous table ring.  
Unto the gardener rake and spade,  
And everything that suit his trade;  
Fruit yet unpulled, potatoes, greens  
Celery plants and kidney beans,  
Seeds of all sorts, with hives of bees,  
Cabbage and carrots, nursery trees.  
Unto the Cook whate'er befits  
Her occupation—pan and spits,

The poker, tongs, the fork that toasts,  
And all with which she boils or roasts;  
Hams, pork or bacon be her lot,  
With everything that goes to pot.  
Unto the scullion all the cook  
By choice or chance may overlook:  
Grease, matches, coals and candles good,  
Faggots and billets of dry wood.  
And that no valet may repine  
To labourer Tom I leave the swine,  
Snorters collected with great pains,  
And all the store of swill and grains.

## Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	4%

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS  
AND  
ACCOUNTANCY THROUGHOUT THE WORLD.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

*Licensed Houses* present some rather special features. The goodwill attaching to the license gives the lease or freehold of licensed premises a market value greatly in excess of their real value as buildings. To be properly considered, the value of the premises and the license must be separated. The former should be depreciated in the usual way, leaving the license alone to be considered. A license on freehold premises does not depreciate, but a license on leasehold premises passes away with the premises and must therefore be depreciated like a lease. A license may at any time be lost—either for misconduct or for no reason—but this is a contingency outside the scope of depreciation. It may, however, be provided against by Insurance, which would appear to be a most prudent course to adopt.

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### Leading Articles.

#### Gas Companies and Depreciation.

THE question raised by our correspondent  
"Enquirer," in a letter which appeared in  
these columns under the above heading last  
week, is one of considerable professional interest.  
It may be, of course, that our correspondent  
asks this question *bonâ fide* with a desire to  
obtain information, but, on the other hand, it  
may be that, having ascertained our views, he

will proceed to apply them to the case of gas undertakings owned by local authorities ; but, however that may be, the question is undeniably of importance, and is therefore, we think, well worthy of consideration upon its merits. The Gas Works Clauses Act, 1871, prescribes a statutory form of accounts for all companies to which that Act applies, and so far as it goes the form may definitely be said to settle the subject in its legal aspect. Shortly stated, it provides for capital expenditure being permanently maintained at cost price ; for repairs, maintenance, and renewal of fixed assets being charged against revenue ; for a Depreciation Fund being created in respect of works on leasehold lands : while Section 31 of the Gas Works Clauses Act, 1847, permits the creation of a Reserved Fund up to 10 per cent. of the nominal capital, such Reserved Fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the company.

These provisions, taken collectively and in conjunction with the circumstance that the statutory form of accounts is upon the Double-Account System, certainly suggest that the intention of the Legislature was that no direct provision should be annually made for depreciation, and that normally the cost of all renewals should be charged against current revenue, but that the cost of extraordinary renewals should be met out of the Reserved Fund, which fund had been previously accumulated out of revenue. The especial circumstances attaching to gas companies are such that the principles of the Double-Account System would be unsuitable if applied in their entirety without any modification whatever, on account of the fact that the necessary and useful expenditure upon renewals

requisite to maintain the undertaking in a state of proper efficiency would materially vary from year to year. But if a provision amounting to 10 per cent. of the nominal capital (and therefore approximately 10 per cent. of the aggregate capital expenditure) has once been set aside out of revenue for the purpose of equalising the expenditure upon extraordinary renewals, there can be little doubt that such provision would be ample for all ordinary contingencies, and that, therefore, this method of dealing with the problem, if not strictly scientific, would at least have the merits of sufficiency and practical efficacy.

That a provision created out of revenue and so designated is misnamed a Reserved Fund goes, of course, without saying, but the idea clearly was to build up a fund represented by investments outside the undertaking—and, therefore, capable of being readily realised—to serve the dual purpose of equalising expenditure upon renewals and of equalising dividends. As the contributions from revenue for these purposes are in any event not made upon any scientific basis, no very useful purpose would be served by building up two distinct funds and allocating one to each service. On the contrary, when the provision is made unscientifically and upon quite broad lines, the balance of advantage would clearly seem to be in favour of avoiding undue restrictions upon the subsequent expenditure of the fund.

It must not, of course, be overlooked that all this is upon the assumption that the works have been erected upon freehold land, and that, therefore, wear and tear and possible obsolescence are the only factors that have to be taken into consideration. In the comparatively small number of cases where the works have been erected upon leasehold land

the Depreciation Fund is compulsory, and it is only reasonable to assume that it is equally compulsory that it should be adequate to build up a fund equal to the original expenditure by the time that the assets which represent that expenditure are lost to the company owing to the expiration of the lease.

If it were necessary to find any further argument in favour of the all-round sufficiency of these provisions it might, we think, be found in a due consideration of the interests of consumers. These consumers are entitled to what has been laid down as their fair share of the benefit arising from the gradual reduction in the cost of manufacture. If, however, gas company directors were left free to make whatever provision they thought necessary, or desirable, for depreciation of plant, it seems not unreasonable to suppose that there would, at all events in many cases, be considerable doubt as to whether consumers would ever receive the benefit of the sliding scale; hence the practical advantages of a simple, albeit somewhat unscientific, system. The directors are allowed to postpone the time when the consumer shall benefit from economies until a Reserved Fund amounting to 10 per cent. of the nominal capital has been accumulated. In so far as that fund represents necessary provision for depreciation it is, of course, not accumulated out of divisible profits, but the excess of the fund over the necessary provision is pure reserved profits. It would not be practicable to devise any effective system for clearly distinguishing how much of the Reserved Fund was a reserve for depreciation and how much was a pure Reserve Fund; but if the maximum amount of such fund is fixed at 10 per cent. the interests of consumers cannot be indefinitely postponed; and if, on the other hand, a fund

amounting to 10 per cent. or thereabouts is maintained upon these lines, the chances of any serious difficulty arising owing to extraordinary renewals in any one year become too remote to call for serious consideration. Upon the whole, therefore, it must be admitted that the statutory provisions effect a reasonable compromise in the interests of all parties, and although they do not provide in the accounts for the reduction of the value of the plant by wear and tear, it would be incorrect to say that they make no provision for depreciation.

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### Municipal Audits.

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IN its issue of the 2nd inst. our contemporary *The Municipal Journal* continues the discussion on the subject of Municipal Audits as follows:—

The real difference of opinion between *The Accountant* and ourselves, on the question of audit, is not, after all, very great. In the last issue the editor again returned to the matter by making the following observations:—

"We, of course, grant that what our contemporary describes as the political aspect of the problem is entirely outside the scope of any audit properly so-called, and it certainly would not be infringed upon by professional auditors, who at least may be relied upon to know what an audit is and what it is not.

If any scheme of financial control by a central body is to be formulated, such control should certainly not be exercised through professional auditors. Our point is, however, that before any control can be exercised, or even any criticism—favourable or otherwise—be offered, the facts must be ascertained.

A professional audit would reveal those facts, which at present are unfortunately frequently obscure, and it is to be feared not infrequently intentionally obscured."

We agree that the function of an auditor is to ascertain facts, but we do not agree that in municipal finance those facts are even sometimes intentionally



obscured. This is one of those statements frequently made but never proved. The fact that it is made at all shows that the person who makes it declines to impartially consider the case before him. Without discussing the question of whether Municipal Accounts ought to be audited by professional or by departmental auditors—the alternatives are not exactly described, but they express the distinctions we wish to make—we put it to *The Accountant* that the interests of the local authorities and of the auditors themselves are best secured by explicitly indicating the limits of the audit before it is undertaken. We say that auditors should not be called upon to express opinions concerning the adequacy or inadequacy of sums set aside for purposes that are governed, not by financial, but by scientific and engineering considerations of which they have no knowledge.

We are glad to note that the issue is now considerably narrowed, and if this has been brought about to some extent by a change of views upon the part of our contemporary, that is, after all, not a very material matter. It is apparently agreed that the object of an Audit (using the term in its proper sense), is to ascertain the facts, and now that this important conclusion has at last been reached, we may perhaps be permitted to express the hope that it will not again be overlooked.

With regard to our statement that it is to be feared that the facts are not infrequently intentionally obscured, our contemporary dissents, and declines to agree that such a condition of affairs exists even sometimes, adding "This 'is one of those statements frequently made, 'but never proved.'" It is not always possible to quote chapter and verse without abuse of professional privilege, but we can at once bring to mind two instances in which the information that has reached us came from no confidential source, and which can therefore be cited in support of our previous assertion. The Cardiff Corporation not so very long ago issued printed accounts which

purported to have been certified by Mr. OSWALD COLEMAN, F.C.A., one of the elective auditors, notwithstanding the fact that that gentleman had not been allowed by the Corporation's officials to complete his audit. The second case that we call to mind relates to the Shoreditch District Council, which first of all submitted its accounts for audit in one form, and then, finding that if the accounts so rendered were correct they were liable to a surcharge, withdrew the accounts altogether, and substituted amended accounts in their place. It is, of course, obvious that both sets of accounts *could* not have been correct.

It would not be difficult to multiply instances, but we know of no useful purpose that would be served by so doing, in that we do not seek to suggest that such a state of affairs is to be regarded as typical of municipal accounts and finance; while, of course, in the majority of cases it is only a very limited number of the Councillors who know anything about the position either one way or the other. Our point is that local authorities have made out no case for exceptional treatment, and that it would certainly be no more business like to assume that their accounts were correct without audit than to make a similar assumption in connection with the accounts of other undertakings; and for this purpose we regard all accounts which have not been professionally audited as *prima facie* unverified.

Our contemporary goes on to suggest that auditors should not be called upon to express opinions concerning the adequacy or inadequacy of sums set aside for purposes that are governed not by financial, but by scientific and engineering considerations of which they have no knowledge—that is to say, our contemporary

wishes it to be clearly understood from the outset that it is no part of an audit to express an opinion as to the sufficiency or otherwise of provision for depreciation. In the great majority of cases we are inclined to agree in general terms, but, of course, our contemporary does not expect us to admit that there are no professional accountants who are competent to express a useful opinion upon the subject. We have, however, always expressed the view that it is no part of an auditor's duty, as such, to assume responsibility for depreciation provisions. If those who are primarily responsible have made what they consider to be an adequate provision for depreciation, it is, we think, not for the auditor to interfere, except, perhaps, for the purpose of seeing that the facts are clearly shown upon the face of the accounts. If, however, no provision whatever is being made for depreciation, it is certainly desirable, to avoid any possibility of misunderstanding, that attention should be drawn to the fact; and those who have the courage of their convictions and state that no provision for depreciation is necessary cannot very well object to this point of view.

It is satisfactory to note that there appears to be at the present time a much more healthy tone on the part of local authorities with regard to the importance of these matters. At one time local authorities resented all outside criticism, and their officials were at least equally sensitive. Of late, however, a better condition of affairs would appear to have grown up, and this is evidenced *inter alia* by the change of view of those of our contemporaries which chiefly concern themselves with local government matters.

## Weekly Notes.

### Pensions for American Railway Employees.

Five years ago, when the Pennsylvania Railroad Company decided on establishing an old-age pension scheme for operatives too old to work, railway officials held up their hands in horror at so revolutionary a proposal. Now, the idea is being taken up all over the country, and it seems safe to predict that at the end of the decade all the big companies will have a proper system of pensions on the lines of a Government department. The usual plan, we are told, is that of an allowance, to every employee at the age of 70, of 1 per cent. for each year of service, based upon the average monthly pay received for the ten preceding years. Thus, if an employee who has been forty years in the service has averaged 100 dols. a month for the last ten years he will have a pension of 40 dols. a month. The experiment is said to have worked well and without noticeably impoverishing the railroads, upon the latter point, however, it is far too early to speak as yet.

### Directors' Qualification.

In the case of *Boschoek Proprietary Company, Lim. v. Fuke* Mr. Justice Swinfen-Eady made a neat point which should be carefully noted. Part of the case dealt with the question of a director's qualification, which, according to the articles, was the holding of 250 shares in his own right. Mr. Fuke was appointed liquidator of a company which held a large number of shares in the plaintiff company, 500 of which were transferred to the defendant in his capacity as liquidator, and he was thus entered on the register. The Judge held that he was not thereby qualified as a director for two reasons:—

- (1) Because he did not hold the shares in his own right, but in the right of the company of which he was liquidator.
- (2) Because "holding shares in his own right" implies that the company could safely deal with him in respect of them, whereas the plaintiff company, having notice by their own register that the shares belonged to the liquidating company, could not have dealt with Mr. Fuke as the owner of them.

A contemporary points out that had Mr. Fuke been registered simply under his own name, it would, of course, have been immaterial whether other persons were interested in them or not, and the qualification would have been a good one. Other points in the same case were

- (1) Apart from a special provision in the articles, directors are not entitled to their fees free of income-tax.
- (2) Where a managing director has been appointed at a salary in excess of the maximum fixed by the articles, the company cannot ratify the contravention of the article without first altering it by special resolution.
- (3) It was argued, though not *decided*, that the offices of director and secretary cannot legally be confined to one person.

**A Hint to Secretaries.** A correspondent of a financial contemporary suggests that where an account stands in several names, a copy of the report should be sent to each person and not merely to the first-named on the register. He adds that in the case of trusts, when the address of the beneficiary is known, as it frequently is by dividends being sent direct, he should also receive the reports. Secretaries might retort that by so doing they might be recognising a trust contrary to their regulations, but perhaps that difficulty might be overcome.

**A Point in Company Liquidation.** It seems by no means an uncommon practice for purchasers from a company in liquidation to neglect to obtain a proper conveyance from the company before its dissolution. In *In re No. 9 Bomore Road* the neglect in question concerned a lease, no assignment of which had been executed to the purchasers. A petition was therefore presented asking for a declaration that the old company at the date of its dissolution was a trustee of the leasehold premises for the new company; that a named person should be appointed trustee in place of the old company; and that a vesting order should be made in favour of the new trustee. Mr. Justice Warrington granted the application.

**Profits of the Bank of France.** The accounts of the Bank of France for 1905 exhibit a profit of over 40½ million francs, against 42½ millions in 1904. Including the balance forward, the surplus for last year is given at 52½ million francs. The share of the State is 7·30 million francs, as compared with 7·59 millions in the previous year, and a dividend of 130 francs per share is announced. The metal reserve at the end of 1905

was 3,935 millions (2,864 millions gold), as against 3,749 millions for the preceding period, and the highest note circulation attained was 4,665 millions, the average for the year being 4,408 millions.

**Mining Companies in 1905.** Last week's issue of *The Mining Journal* contained Mr. Edward Ashmead's annual review of mining registrations, and it is interesting to note that while in 1905 no new mining field was brought to light, the number of actual registrations was greater than in the previous period. The following is a retrospect of the five years ended 1905:—

		Companies		Nominal Capital
1901	..	519	..	£46,376,289
1902	..	417	..	43,144,460
1903	..	430	..	41,376,052
1904	..	328	..	26,948,130
1905	..	368	..	31,427,573

The analysis of the 1905 figures is as follows:—

	Companies	Nominal Capital
Great Britain (including coal)	104	£3,478,808
Our Colonies & Dependencies	126	18,375,433
Foreign Countries & United States	138	9,573,332
	<u>368</u>	<u>31,427,573</u>

We also note that, although prospectusless companies showed up strongly during the year, the number of Guernsey registrations fell from seventeen, with £3,250,000 capital, to twelve, with £1,840,000.

**New Issues in January.** The following table shows the new issues of capital in January 1906, contrasted with the figures for the last month of the old year:—

Description	January 1906		December 1905	
	No. of New Issues	Share and Deb. Cp'tl or amount of Loans	No. of New Issues	Share and Deb. Cp'tl or amount of Loans
		£		£
Public Loans .. .. .	—	—	3	1,750,000
Financial .. .. .	—	—	1	350,000
Commercial and Miscellaneous	6	1,426,000	6	970,000
New Issues by existing companies	13	2,349,300	16	1,799,570
Mining .. .. .	7	573,700	7	2,406,000
<b>Total .. .. .</b>	<b>26</b>	<b>4,349,000</b>	<b>33</b>	<b>6,275,570</b>

It is interesting to note the entire absence of public loans and of appeals by financial institutions; and even the slight increase in the Commercial and Miscellaneous

will be welcome to those who watch and wait for the boom that is always "coming," but which never seems to arrive.

**Limited  
Companies and  
the Publication  
of Accounts.**

Following closely upon the heels of the recent agitation in the press against the practice of not publishing Reports and Balance Sheets adopted by certain companies, in which the bulk, or the whole, of the share capital is held privately and only the debenture issues held by the public, it is announced that Messrs. Bass, Ratcliff & Gretton, Lim., have decided to issue in future an annual statement of accounts, and that the first will appear in August next embracing the financial year to 30th June. Now that the pioneer brewery has given way it is not expected that the others will hold out much longer.

**Associations of  
Accountants.**

The recent advertisement of the Society of Accountants and Auditors warning the public that certain persons styling themselves Incorporated Accountants were not members of that body has been followed by one issued by a body styled the Central Association of Accountants, stating that this warning does not refer to its members, whose designation is, and has been, "Associated Accountants." This is a customary way of advertising the existence of a concern which might otherwise be overlooked.

**Sir Edward Fry  
and the  
Water Board  
Arbitration.**

Sir Edward Fry, one of the Arbitrators under the Metropolis Water Act, 1902, has forwarded a cheque for £3,081 10s. 4d. to the Water Board, as representing a proportion of his arbitrator's fee of £5,000 which he does not desire to retain. Sir Edward has also paid the sum of £250 to the Institution of Mechanical Engineers in recognition of their courtesy while the arbitrators were sitting in their building. Sir Edward is in receipt of a pension of £3,500 per annum as a retired Lord Justice, and it may well be that under these circumstances he feels that he cannot very well draw his pension and engage upon other judicial work at the same time, but it is not everybody who is so fortunately situated, and comparisons in such cases become inevitable. We think that those who accept positions to which emoluments attach, should accept the emoluments along with the appointment. If they do not care to retain the money after they have earned it, there are many other ways of getting rid of surplus funds which are equally

serviceable to the community, and at the same time less embarrassing to those who take the more normal view that, having earned fees, they are entitled to retain them.

**The  
L.G.B. Accounts  
Committee.**

The Municipal Trading Committee of the London Chamber of Commerce has passed a resolution to the effect that as the Departmental Committee recently appointed by the Local Government Board in municipal accounts does not conform to the recommendations of the Joint Committee of 1903, its decisions cannot command the confidence of the commercial community. There seems to be somewhat of a gap between the conclusion and the premises which will probably prevent this resolution from being received with the unbounded confidence of the aforesaid commercial community. As we pointed out in a recent issue, we do not ourselves feel very enthusiastic about the matter, but we think it only fair to await the Committee's report before expressing any opinion with regard to it, one way or the other. In the meantime, however, if any of our better-informed contemporaries—say, for instance *The Municipal Journal*—can tell us exactly who all the members of this Committee are, a certain amount of mystery would be cleared up. Our contemporary, in its last issue, gave a precise history of the attainments of all the members of the Municipal Trading Committee of the London Chamber of Commerce, but at the present moment similar information concerning the Departmental Committee would, we cannot help thinking, be of far greater public interest.

**Form of  
Balance Sheets.**

In reply to "Country Practitioner," whose letter under the above heading appeared in our issue of the 27th ult., we should be inclined to say that neither method of stating debentures in a company's Balance Sheet was incorrect, and it is, of course, possible to clearly state the facts whichever method be employed. What is, we think, really important, is that by the time the debentures mature the discount shall have been written off against profits. While, however, the debentures are only repayable at some more or less remote future date, there is no especial reason that they should be stated in the Balance Sheet at the full face value that will have to be payable. Probably, however, the best argument in favour of deducting the discount from the liabilities'

side of the Balance Sheet is the essentially unsatisfactory nature of this item when regarded from the point of view of an asset.

**The London City  
and Midland  
Bank, Ltd.**

At the recent meeting of the London City and Midland Bank, Ltd., some remarkable figures were given showing the progress made during the past quarter of a century. The paid-up capital of the company has increased from three hundred thousand pounds to three million pounds, the surplus assets from two hundred and ten thousand pounds to three millions, the deposits from two million pounds to fifty and a quarter millions, and the number of branches from three to upwards of three hundred. It may be mentioned that during the whole of this period the present chairman has been a member of the board.

**Accountants  
Touting.**

A provincial correspondent forwards us a circular, recently issued by a member of the Institute, announcing that he has opened branch offices at Cardiff for the convenience of his clients in South Wales. On the fly-leaf of the circular is a portrait of the member in question, and certain information with regard to him which is, doubtless, already well known to his clients. The question that at once suggests itself is as to why it should be thought necessary to advise strangers of what has been done for the convenience of one's clients. It is generally understood that any form of advertising upon the part of a Chartered Accountant is unprofessional, and the particular means employed in this particular instance are certainly no exception to the rule. From other sources we have received copies of the usual touting circulars sent to traders in financial difficulties. These present no very novel features, but they show that the abuse of the accountant who masquerades as a trade protection society has not yet been stamped out.

**Deeds of  
Assignment and  
Trust Moneys.**

So far as we are aware the question asked by our correspondent "F. M." last week raises a new point. Doubtless, however, the ordinary rules may be applied. Trust property which is capable of being traced and identified may be claimed by or on behalf of the true owner, notwithstanding the bankruptcy of the trustee; but, if the trust property consists of money which has

been mixed with other moneys belonging to the bankrupt, the tracing thereof would soon become a difficult if not an impossible task. With regard to deeds of assignment, it may, we think, be taken that whatever remedies a creditor would have had in bankruptcy he can in practice secure under a deed of assignment if he is sufficiently circumspect not to lose his right to petition in bankruptcy in case of disagreement. A further question which might perhaps be raised, and would certainly be worth considering in a last resort, is as to whether the assignment by a debtor of property that does not belong to him is not absolutely void. Perhaps some of our readers will let us know what they think with regard to the whole matter?

**"Account  
Payee."**

The point to which Mr. L. W. Hawkins, A.C.A., directed attention in our last issue is one that is well worth bearing in mind, as, of course, nothing can be more misleading than a precaution which does not protect. The words "Account Payee" are, for all practical purposes, valueless on the face of a cheque, and indeed, speaking in general terms, nothing can take away from the negotiability of a cheque save the words "Not Negotiable." If these words be added, we think no need exists to indicate the individual account through which a cheque must be cleared.

**Allen  
Corporations.**

A legal correspondent of *The Financial Times* very properly draws attention, in the course of a long and extremely interesting article, to the position of foreign companies in England. We have so long prided ourselves on the high esteem in which the liberty of the subject is held that we have now to face some very curious situations. Foreign firms, companies, and corporations are free to set up in business here absolutely unhampered, unlicensed, and untrammelled, so full are we of that blessed phrase "comity of nations." Yet, as our contemporary's correspondent points out, "It is contrary to the comity of nations for the King's writ to be served on a German in Berlin, according to the view of the English Courts, but it is not a breach of that principle for the Kaiser's writ to be served on an Englishman in London from the German point of view, and apparently from the English point of view too, or why do they allow it?" Our readers will doubtless

remember that our Companies Acts, with one exception, do not apply to foreign corporations at all. The exception itself is rather a farce, for although (1862 Act) the Court may order the winding-up of a foreign company trading in this country, and having assets as well as liabilities here, it cannot dissolve the concern, for there seems to be no jurisdiction to cover any such decree with regard to a foreign corporation. Furthermore, it is pointed out that the power mentioned is expressly limited to cases where there are more than seven members, and what will happen when the English Courts are asked to order the winding-up of a foreign corporation having only seven or less than seven members, goodness only knows! Since alien corporations may carry on business in this country without troubling about our Companies Acts, and such mundane matters as the registration of capital, debentures, directors, mortgages, &c. &c., it is obvious that they are permitted to trade in competition with English concerns on terms very advantageous to themselves. Presumably, most of our regulations affecting companies enjoying limited liability were made with a view to the protection of the public, yet we permit these aliens in our midst without even the slightest thought for the public interest. It is so delightfully typical of our insular muddle-headedness. To take only one instance of the incongruity of the case. An English company is only allowed to trade under its registered name, whereas a foreign corporation, we are told, may trade in its corporate name or in "the name it has acquired by reputation." Seeing, therefore, that a name can only be acquired by reputation following user, a foreign corporation may trade in different places under different names and so acquire a reputation for them all! If we boasted less about liberty and freedom and applied those said estimable qualities all round we should be deserving better of the historians, and we cannot but think that herein the new lawmakers have a much-needed reform clamouring for attention.

### Current Law.

#### BANKRUPTCIES AND INSOLVENCIES.

*In re H. R. Jones; ex parte The Guardians  
of the Wandsworth Union.*

K.B.D.

Held, reversing decision of Wandsworth County Court Judge, that an application by a creditor that

certain proofs admitted for voting purposes be expunged and a new first meeting of creditors called ought to be heard on its merits. The estate having been transferred to the High Court, the application was remitted to the Judge in bankruptcy.—(*Times*, Feb. 7.)

#### RECEIVERSHIPS.

*In re British Power Traction and Lighting Company,  
Lim.; Halifax Joint Stock Banking Company, Lim.  
v. The Company.*

Warrington, J.

This case raised an important question of principle as to the right of a receiver and manager appointed in a debenture-holders' action to be indemnified out of the assets of the company in respect of debts and liabilities incurred by him in excess of the amount which he had been authorised to borrow on the security of such assets. The full report should be read.—(*Times*, Feb. 7.)

### Correspondence and Enquiries.

All communications to the Editor should be by letter only.

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### Income Tax.

(To the Editor of The Accountant.)

SIR,—John Brown, living in a distant town, was the proprietor of the business of a wholesale and retail dealer, and appointed one of his sons as manager, paying him a salary for the year—

1902 of £200	} for which he was assessed under Schedule D,
1903 of £200	
1904 of £250	

with no other benefits, with a resulting balance in favour of the proprietor of—

£300 for the first year	} upon which income-tax
£280 for the second year	
£240 for the third year	

was paid under Schedule D.

John Brown dies.

John Brown, Junr., the manager, acquires the business by purchase from the executors.

He commences to work it on his own account on the 1st January 1905, his first trading year expiring on the 31st December 1905.

The Surveyor sought to assess him for the year 1905-1906 upon the average for the preceding three years ending December 1904, adding the salary which he was paid to the profits for each year.

To this John Brown, Junr., demurred, and a suggestion was made by him that the stock should be taken and a Profit and Loss Account prepared for the year 1905, to which the Surveyor assented.

This was done with a resulting profit of £350.

The Surveyor, finding the profit for 1905 to be less than the average of the combined profit and manager's salary for the three years 1902-3-4, seeks to assess on the average of the three years 1903-4-5, including in the 1903-4 years the manager's salary, thus:—

Profit, 1903	...	...	£280	
Salary	...	...	200	
				£480
Profit, 1904	...	...	240	
Salary	...	...	250	
				490
Profit, 1905	...	...	...	350
				3)1320
				£440

John Brown, Junr., claims to be assessed thus:—

On Profit, 1902	...	...	£300	0	0
Do. 1903	...	...	280	0	0
Do. 1904	...	...	240	0	0
					3)820 0 0
					£273 6 8

or, in the alternative, on his actual ascertained profit of £350.

Is the Surveyor right in demanding that the salary the manager should be added to the profit of the

former years and that the assessment should be on £440?

Yours truly,

JUSTICE.

### Colliery Shortworkings.

(To the Editor of The Accountant.)

SIR,—With regard to your article under the above heading in your issue of 3rd instant, may I be allowed to express the opinion that the noticeable absence of correspondence in response to "Tonnage Rent's" first letter, is due to the question being one that presents no difficulty whatever to the average accountant's mind. As stated by you, the practice is to "carry forward any proportion of the minimum rent which is "redeemable out of future workings, provided there is "a fair prospect that it will be so redeemed."

As a matter of fact, in practice ample margin is provided for redemption, for at the outset the minimum rent—sometimes named "dead rent"—is carefully computed upon a *fraction* of what the workings will ultimately be.

I am quite within actual working figures in stating that the overworkings, when fully developed, should range between five and ten times the amount of minimum rent payable.

I hope "Tonnage Rent" will clearly grasp the significance of this proportion, because a colliery's output is never based upon the minimum rent tonnages, and it follows that if the workings do not go far beyond the minimum of the leases in operation, the chances are there will be no profits to take such rent out of.

Generally a colliery has several leases of mining rights, and the question of providing a Reserve is one which certainly comes under consideration where there are any doubts of the ultimate working of the area covered by one of its leases in the prescribed time, or where, having entered upon the workings, they are only partially worked or abandoned, either because of unforeseen difficulties or the main source of supply remaining sufficient. These are contingencies which should be provided for, but with "Tonnage Rent's" contention that profits should be systematically disturbed with "Reserve" or "written off" charges upon healthy minimum rents, I cannot agree.

In his latest letter he flaunts an assertion in effect that a "simple payment in advance" should be dealt

with as a liability, and come off the *present shareholder's dividend* instead of out of the *cash of the company*, one of the very purposes of the creation of which was "To purchase, lease, or otherwise acquire mines, quarries, mining ground . . . concessions, rights, &c." Such a course is not accountancy.

I am, Sir, yours truly,

DEAD RENT.

(To the Editor of The Accountant.)

SIR,—Your footnote to my letter in your last issue intimates that the actual profits would be concealed if my suggestion was adopted; there would, however, be no concealment if shown thus:—

Profit (after debiting tonnage rent only) £	:	:
Less Reserve against shortworkings ... £	:	:
£	:	:

This method would reserve a corresponding amount of profit to the shortworkings until such year as they are worked off, and it is only *when* worked off that such profit can be truly said to be earned. My views are *not* to prepare the Revenue Account upon a *cash* basis, as you say, but to deal with an item of a special nature in a special manner; a book debt is not cash, but it is a definite sum owing by a certain individual from whom it can be collected: shortworkings carried forward cannot be collected from any outsider, but only from the company itself *out of its own profits earned in the future*—therefore it seems a very reasonable view to wait until that time before dividing the amount, at any rate, even you must admit that it would be prudent to do so.

You say it is the established custom to carry forward the "shorts," but I can name at the moment nearly a dozen companies that regularly keep a reserve each year in their Balance Sheets against such "shorts," and the object of my original letter on the subject was to ascertain if other accountants also found such Reserves in their experience.

Your article, whilst supporting the old principle (with which, by the way, I am perfectly familiar), puts forward so many points on the other side that it almost supports the suggested new treatment more than the old. For instance, you say (1) "one should be satisfied that there is every reasonable probability that they (the shortworkings) have a definite realisable value

"equal to the amount brought forward"; (2) "there can be no permanent value in shortworkings"; (3) "provided only that events prove them capable of redemption"; (4) "it may be extremely difficult to express any very certain opinion upon their value"; (5) "in case of doubt clearly the only prudent course is to be on the safe side and charge them against Revenue"; (6) "we agree as to the expediency of not dividing up to the hilt."

These remarks show that there is always *some* doubt, and perhaps considerable doubt, as to the value of the asset mentioned, and, moreover, its value can only be proved by *after* events, why not, therefore, *always* be on the safe side and keep a Reserve as suggested. If £1,000 is carried forward as "shorts," and a few years later this has to be written off as irrecoverable, have not the profits in the meantime been overstated, and if fully divided, have not the profits of future years been *anticipated*? The charging annually of the minimum rent (or making a Reserve, which is practically the same thing) harms no one, loses nothing, and is sound *financially*, even if it does depart from the accepted principles to which you refer.

I do not propose to trouble you further on this subject, but perhaps the following might be worthy of some opinions:—A colliery is purchased at, say, £50,000, and there are £5,000 of "shorts" standing; no reference is made to these in the agreement fixing price, but the landlords agree that the new tenant can work off these "shorts." In opening the new company's books should the property be entered as costing £50,000, or at £45,000 and an account opened for "shortworkings" at £5,000? If the latter course is adopted, then the new company will have to set aside each year, as the "shorts" are worked off, a certain sum to write down the "shorts" account until £5,000 of their profits have been so dealt with, and that amount could not be divided as dividend. Is this the correct treatment, and is the new company *bound* to enter such "shorts" as an asset, or entitled to ignore them and only debit the actual rents they have to pay until the overworkings square the account?

Yours faithfully,

5th February 1906.

TONNAGE RENT.

### Foreign Currencies and Branch Accounts.

(To the Editor of The Accountant.)

SIR,—In dealing with the accounts of a foreign branch, I find that the practice is to convert it



balance of Profit and Loss Account (which is made out in dollars) at the rate of exchange ruling at the *end* of the period covered by the accounts, instead of taking the average rate *during* the period, which is advocated by authorities as the usual and correct method.

The effect is, therefore, to credit the balance of Profit and Loss Account to the head office in London, at the actual rate at which such balance could be remitted on closing the books, bringing it into line with the floating assets and liabilities.

I venture to think that this system has something to recommend it, since the best test of the value of an item must be the amount which it is known could be actually realised; and the mere fact that the transactions comprised in a Profit and Loss Account extend over a period does not seem to warrant the adoption of an average rate that could only by the merest coincidence give the correct measure of such transactions.

Should remittances against a probable profit have been made during the period, the principle would not, it is thought, be effected, the result being merely a gain or loss in exchange due to the anticipation of profits; and even this could be eliminated by deducting such remittances from the profit when ascertained, and treating the balance only as available at the rate of the day.

If any reader would kindly give the reasons for the usual method of converting the balance of Profit and Loss Account at the average rate over the period, it would be much appreciated by

Yours faithfully,

C. H. B.

#### Income Tax.

(To the Editor of *The Accountant*.)

SIR,—Adverting to the letter in your issue of January 27th signed "C. W.," in my opinion both assessments were correctly made, assuming that the proper average was taken in each case.

With regard to the *business*, the tax would be payable for the whole year—viz., one-third by A. B., and two-thirds by C. D.

In the case of the *salary*, unless a successor took the place of C. D. the employment ceased, and Section 134 of the 1842 Act applies. No tax is payable for any period after cessation of employment.

Yours faithfully,

I. T. EXPERT.

## The Institute of Chartered Accountants in England and Wales.

At a meeting of the Council, held on Wednesday, the 7th February 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—

Mr. John Gane, President, in the chair; Mr. W. B. Peat, Vice-President; and Messrs. J. B. Ball, J. W. Barber, J. H. Blackburn, W. Blease, T. Bowden, E. M. Carter, Ernest Cooper, Sir John Craggs, E. Edmonds, Sir Walter Fisher, A. H. Gibson, J. G. Griffiths, B. W. Hardcastle, D. Hill, W. C. Jackson, F. A. Jenkins, H. Woodburn Kirby, A. O. Miles, F. W. Pixley, W. Plender, F. J. Saffery, T. G. Shuttleworth, G. Sneath, W. A. Stone, J. M. Wade, F. Whinney, T. Wise, J. W. Woodthorpe, and F. J. Young.

It was resolved:—

That this Council begs leave to express its deep sympathy with Her Majesty, Queen Alexandra, in the great and irreparable loss Her Majesty has sustained through the death of Her Majesty's respected and illustrious father, King Christian the IX. of Denmark.

Mr. Frederick Whinney was appointed to represent the Institute on the Committee appointed by the London Chamber of Commerce to organise a Conference of Industrial Associations, Chambers of Commerce, and Local Authorities, with regard to the question of the Professional Audit and Standardisation of Municipal Accounts.

The names of three members of the Council were submitted to the Board of Trade with a view to the selection of one to act as a member of a Bankruptcy Committee about to be appointed to inquire into certain questions in connection with a proposed amendment of the Law of Bankruptcy.

Mr. John Gordon, F.C.A., 19 Bond Street, Leeds, was elected a member of the Council in the place of the late Mr. C. Beevers.

Mr. Theodore Gregory, F.C.A. (Morris, Gregory, Holmes & Hansford), Parr's Bank Buildings, 3 York Street, Manchester, was elected a member of the Council in the place of the late Mr. Thomas Browning.

The resignations of:—

Mr. E. J. Gardiner, F.C.A., London.

„ David Roberts, F.C.A., Cardiff.

„ D. J. Shedden, A.C.A., Dudley.

„ J. Shedden, A.C.A., Dudley.

were accepted.

The Secretary reported the death of:—

Mr. F. F. Cates, F.C.A., London.

„ J. M. Winter, F.C.A., Newcastle-upon-Tyne.

„ F. T. Arnott, A.C.A., Brighton.

„ C. Lowrey, A.C.A., Leeds.

It was resolved that Certificates of Practice be issued to the following members:—

Atkin, Percy Francis (Francis Atkin & Son), 1 Wheeler Gate, Nottingham.

Benjamin, Francis Harris (Jeffery & Co.), Pearl Buildings, Portsmouth; and at London.

Browning, Neville Cuthbert (Thos. Browning & Son), 18 Booth Street, Manchester.

Bunch, John Tindall, Imperial Buildings, Bridge Street, Walsall.

Campbell, George Lionel (Campbell & Campbell), 94 Market Street, Manchester.

Clark, Charles Ernest (Hurtley & Clark), 24 Bond Street, Leeds.

Cronk, Eric Tylee (Sidney Cronk & Co.), 43 & 44 Lombard Street, E.C.

Darbyshire, Philip Henry, 17 Albert Road, Middlesbrough.

Dickinson, Walter Sigismund (Howard & Maisey), 16 Piccadilly, Bradford; and at Leeds.

Emanuel, Edward Maurice, 31 Barbican, E.C.

Fidgeon, Henry Cave (H. C. Fidgeon & Co.), Copthall House, E.C.

Fortune, John Collingwood (William Fortune & Son), 36 Church Street, West Hartlepool.

Furnival, William James (Deakin & Furnival), Foster's Buildings, 22 High Street, Sheffield.

Goodland, James Easton, B.A., 4 The Bridge, Taunton.

Grant, Richard Henry (Grant & Wigfield), Consett Chambers, Pilgrim Street, Newcastle-upon-Tyne; and at North Shields.

Groves, William Henry (Groves & Bridgwater), 88 Colmore Row, Birmingham.

Gruning, Louis Henry, 8 Queen Street, E.C.

Hawkins, Leslie Whittem (George A. Touch & Co.), Basildon House, Moorgate Street, E.C.

Henshall, James (Warmsley, Jones & Co.), 29 Eastgate Row North, Chester.

Holey, Arthur Walton (Rawlings & Wilkinson), 59 John Street, Sunderland.

Hurtley, Norman (Hurtley & Clark), 24 Bond Street, Leeds.

Ibbetson, Bertram, 7 & 9 Pearl Assurance Buildings, Market Street, Bradford.

Johnson, Percy Harold (Radley & Johnson), 10A Temple Row, Birmingham.

Jones, Warren John (Carter & Co.), 33 Waterloo Street, Birmingham.

Lawrence, William, 20 East Dulwich Grove, S.E., and 33 Chancery Lane, W.C.

Leather, George (Cook & Leather), African House, Water Street, Liverpool; and at Chester.

Lord, John Roberts (F. Hunter, Gregory & Lord), Irwell Terrace, Bacup.

Lunnon, Frank Septimus, Churchdown, Cheltenham.

Marrian, James Henry Robert Francis (Warriner, Marrian & Co.), Bank Chambers, 47 Temple Row, Birmingham.

Miller, Edward, Haworth's Buildings, 5 Cross Street, Manchester.

Murray, Richard Hollins (R. H. Murray & Co.), 14 Tib Lane, Cross Street, Manchester.

Palmer, Edward Harry, Parliament Chambers, Parliament Street, Nottingham.

Radley, George Wilson (Radley & Johnson), 10A Temple Row, Birmingham.

Robinson, Glendenen, 21 Albert Road, Middlesbrough.

Sargant, Alexander Fletcher, 80 Coleman Street, E.C.

Seeböhm, Rudolf Benjamin, 20 Clarence Street, Gloucester.

Silcock, Bertram (Bertram Silcock & Co.), 6 Egypt Street, Warrington.

Stride, Basil Hugh, 13 Veronica Road, Balham, S.W.

Thurgood, Alfred Nash (Frank Davies, Meredith & Co.), Moorfields Chambers, 95 & 97 Finsbury Pavement, E.C.; and at Birmingham.

Vickerman, William Percy, 9 Parliament Street, Hull.

Wainwright, Henry Scurrah (Beevers & Adgie), 52 Basinghall Street, Leeds.

Walsbe, Holwell Hely Hutchinson, 7 Union Court, Old Broad Street, E.C.

Waterhouse, Nicholas Edwin, B.A. (Price, Waterhouse & Co.), 3 Frederick's Place, Old Jewry, E.C.

Watson, John William (Watson & Heslop), 8 Priestgate, Darlington.

Wenham, Reginald Arthur, M.A. (Wenham, Angus & Co.), 10 Walbrook, E.C.

Winnerah, William, Junr. (Stead, Taylor & Stead), The Temple, Dale Street, Liverpool.

Wigfield, Alan Eskholme (Grant & Wigfield), Consett Chambers, Pilgrim Street, Newcastle-upon-Tyne; and at North Shields.

Wilkinson, Christopher Smith (Hallam, I'Anson & Co.), 7 Arden Street, Darlington.

Williams, William (C. E. Williams & Co.), Salop House, Salop Road, Oswestry.

Wright, Edmund Cecil, 75 Larkhall Rise, Clapham, S.W.

A number of applicants were admitted members, and 13 Associates were elected to Fellowship. A list of those who complete their Membership or Fellowship by the 22nd inst. will appear in our issue of the 24th inst.

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### Recent Additions to the Library.

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#### *Purchased.*

Advanced Accounting. By L. R. Dicksee, F.C.A. 2nd Edition. London: 1905.

Auditing. By L. R. Dicksee, F.C.A. 6th Edition. London: 1904.

Compendium of Mercantile Law. By J. W. Smith. 2 vols. 11th Edition. 1905.

The Power and Duty of an Arbitrator and the Law of Submission and Awards. By F. Russell. 9th Edition. London: 1906.

Sale of Goods Act. By M. D. Chalmers. 6th Edition. London: 1905.

The Law relating to the Taxation of Foreign Income. By J. Buchan. London: 1905.

Guide to the Death Duties and to the Preparation of Death Duty Accounts. By C. Beatty. London: 1906.

Essays and Addresses on Economic Questions (1865-93), with Notes, 1905. By Viscount Goschen. London: 1905.

Revised Reports, Vols. 76, 77, 78, and Index to Vols. 1-65.

De necessariis observantiis scaccarii dialogus, commonly called Dialogus de scaccario. By Richard, son of Nigel. Oxford: 1902.

Bacon's Atlas of London. London: 1906.

English-French and French-English Dictionary. By A. Spiers. 2 Vols. Paris: 1905.

Notes on Webster's Bookkeeping. Dublin: 1747.

The Annual Digest, 1905. By John Mews. London: 1906.

Insurance Blue Book and Guide, 1905-6.

#### *Presented by the Law Society (per the Secretary).*

Solicitors' Remuneration Order: Digest, &c. London: 1898.

#### *Presented by the Authors.*

Brewery Accounts: A Lecture. By K. Cook, A.C.A. Edinburgh: 1906.

Promoters in their relation to Directors: A Paper. By F. W. Pixley, F.C.A. London: 1905.

Directors' Duties towards Auditors and otherwise: A Paper. By T. A. Welton, F.C.A. London: 1905.

*Presented by Lister Woodhouse, A.C.A., City Comptroller.*

City of Westminster Abstract of Accounts, 1904-5.

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### Review.

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#### **Multiple Cost Accounts.**

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By H. STANLEY GARRY, A.C.A.

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("THE ACCOUNTANTS' LIBRARY," Vol. XLII.)

London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 3s. 6d. net.

This volume is the first of four to be included in the Library series, each dealing with a section of the important subject of Cost Accounts. As is indicated by its title, the present handbook deals with a system of costing applicable to undertakings where a number of products are involved bearing little or no apparent relation to each other in cost or selling price, in which the standardisation in parts is carried to a high degree of specialisation in manufacturing. Such undertakings include boots, cycles, hosiery, agricultural implements, and various engineering specialities. The system described is one that appears to be well suited for the purposes under consideration, and no fault can be found with its elucidation. Of necessity, of course, it remains merely a skeleton which has been clothed to meet the practical requirements of each separate factory, but it will be found of considerable value, and represents a distinct advance upon the system hitherto adopted of dealing with Cost Accounts in general terms, as though the problems were under all circumstances practically identical.

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### Meetings for the ensuing Week.

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Wednesday—SHEFFIELD CHARTERED ACCOUNTANTS' STUDENTS' SOCIETY.—Lecture, "Some Points in Accountancy," by Mr. S. S. Dawson, F.C.A., at the Library, Hoole's Chambers, Bank Street; 6.45 p.m.

**LEICESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.**—Lecture, "An Income Tax Assessment," by Mr. F. W. Preston, A.C.A., at Winchester House, 1 Welford Road; 7 p.m.

**Thursday**—**LEEDS AND DISTRICT CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.**—Lecture, "Requisites of a Contract," by Mr. W. E. Farr, Solicitor.

**Friday**—**NOTTINGHAM CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.**—Lecture, "Income Tax," by Mr. Chas. Comins, F.C.A., at 1 King John's Chambers, Bridle-smith Gate; 7.30 p.m.

## Newcastle Chartered Accountants Students' Society.

### Brewery and Bottled Beer Accounts and Audits.

By HERBERT LANHAM, A.C.A.

LECTURE delivered at Newcastle to members of the above Society on December 12th 1905.

At the present time the general public are undoubtedly very large holders of shares and debentures in the numerous breweries that have been converted into limited companies during the last decade. In consequence of this, and the fact that many of the largest concerns are at present under a cloud, financially speaking, it is easy to explain the great interest that is being evinced in all matters connected with the brewery trade, and I venture to hope that another paper on the above subject will not be unwelcome at the present time, more particularly as it is evident that expenses and costs are going up and sales going down, and therefore it is becoming more and more necessary for brewers and managers to keep a close supervision over every department.

The fact that excellent lectures have been delivered by such experts as Mr. William Harris, Mr. Daniel Hill, and Mr. J. J. B. Arter, renders it somewhat difficult for me to break new ground, but as I was many years ago on the staff of a brewery, and have had to study the whole subject lately while engaged in writing a book on Brewery and Bottled Beer Accounts for the "Accountants' Library

Series," I think I shall be able to bring before you some few interesting, and possibly new, points more particularly connected with the bottled beer trade, and some remarks dealing with the heavy losses made during the last few years on loans granted to tenants.

The brewery trade is probably older than perhaps many of you imagine. In a very interesting lecture delivered by the late Professor Tyndall on "Fermentation," the following passage occurs:—

"Our prehistoric fathers may have been savages, but they were clever and observant men. They founded agriculture by the discovery and development of seeds whose origin is now unknown. . . . Later on, when the claims of luxury added themselves to those of necessity, we find the same spirit at work. We have no historic account of the first brewer, but we glean from history that his art was practised and its produce relished more than 2,000 years ago. Theophrastus, who was born nearly 400 years before Christ, described beer as the *wine of barley*.

It is extremely difficult to preserve beer in a hot country; still, Egypt was the land in which it was first brewed, the desire of man to quench his thirst with this exhilarating beverage overcoming all the obstacles which a hot climate threw in the way of its manufacture."

Has it occurred to you that the word "brewery" now covers a very varied and comprehensive business, and usually a brewer, if he is also manager, must not only understand the brewing of beer, but may have to do the buying of barley, hops, sugar, horses, and fodder, and the manufacturing of malt. He probably has to manage freehold and leasehold properties, agencies, and depôts, and may have to supervise the working of houses under management. He must be a chemist, and should be a good salesman, and, in addition to this formidable list of acquirements, he frequently has to be able to manage a wine and spirit trade and the manufacturing of mineral waters and cordials.

It will be easily understood that to carry on such a varied business, or rather collection of businesses, very many books and statistical returns are necessary, quite apart from the actual double-entry bookkeeping system; in fact, I believe few businesses require more varied accounts, &c. I do not propose in this paper to deal with the books required for the Wine and Spirit or Mineral Water Departments of a brewery, as they could not be dealt with in the time at my disposal this evening. "The Accountants' Library Series" contains some excellent handbooks on those subjects.

Also I do not propose to deal with the books of a brewery which are almost identical with those in use in other businesses, but shall discuss the books, forms, and accounts which are more or less peculiar to the brewing trade, and which possess special points of interest to accountants.

I propose, however, to devote special attention to the bookkeeping and stock-keeping questions involved in the development of the bottled beer trade, not only because those questions do not appear to have received the attention they deserve, but also because the capital which has to be expended on bottles, stoppers, and cases renders it imperative that strict supervision should be exercised, otherwise heavy losses may result through the non-return of those articles, to say nothing of the increased capital required (and consequent loss of interest), which will become necessary if bottles and cases are not collected promptly.

After these preliminary remarks I now come to the first head of my paper.

The importance of a proper check upon the weight of goods received into a brewery is considerable, more particularly with regard to hops and barley purchased. All goods received should be weighed when they arrive, and the weights so ascertained entered in the Goods-in Book, and subsequently from the Invoice Book to the Stock Books side by side with the invoiced weights. This preliminary weighing enables some part of the deficiencies, which are usually shown by the different Stock Books, to be accounted for, they possibly having occurred in transit.

There should be no difficulty in keeping the Goods-in Book referred to, as in most breweries there is a gate-man, whose duty is to keep an account of all goods both coming in and going out, and I consider the check so exercised to be a most valuable one.

By means of this Goods-in Book every invoice can be checked as regards receipt of goods; and by cancelling the order forms when they have been compared with the invoices it is easy at stocktaking to make sure that no liabilities for goods have been omitted, as every counterfoil of the Order Book not cancelled means that some account has not been received at the brewery.

The Goods-out Book is also essential, but too much reliance must not be placed on it, as to my knowledge a carman, in collusion with the gate-keeper, allowed several barrels of beer to be sent out every week without noting the fact. It was eventually discovered by means of the Beer Trading Account, which conclusively proved that a serious leakage was going on, as the difference in the quantity of beer made and the quantity sent out or in stock was too large to be accounted for by the ordinary

allowance for wastage. Inquiries were made, and it transpired that the carman was supplying a friend of his, who kept a public-house in the town, with the beer in question. This fraud could not have taken place if there had been a proper system of Beer Stock Books in use, as had already been recommended by the auditors, but whose suggestion that a special clerk should be kept to keep complete Stock Books had not been adopted on the ground of expense.

I wonder when it will be fully recognised by all commercial men that the keeping of Stock Books and Cost Accounts for all manufacturing firms is practically essential to success in these days of keen competition, and that money spent on the clerical labour necessary is not likely to be thrown away, and inasmuch as the output and the materials used can be so easily checked and verified there is no excuse for not doing so in a brewery.

With a view of ascertaining the quantity of the materials used, the accounts in the Impersonal Ledger for Purchases of Hops, Malt, Sugar, Coal, &c., should have columns for quantities as well as money. The Purchases Book shows the total of all invoices, with Analysis columns provided for each of those materials, together with columns under each heading for quantities and Stock Book folios, and a final column for items for which it is not necessary to have separate columns. From these columns the Stock Books are debited with the quantities of each purchase, and the total of both quantity and money columns each month debited to their respective Material Accounts in the Impersonal Ledger. The Purchases Returns Book is ruled in the same manner, and the quantities credited to the Stock Accounts in detail, and the total of both columns credited to the Impersonal Ledger Accounts.

The Stock Books are credited with the materials withdrawn from stores from time to time for the use of the brewery, the details of the quantities so used being eventually checked from the Brewing Book kept by the brewer.

When stocks are taken—and this should be done three or four times a year—the quantities are introduced into the Stock Books as balances, and the two sides cast, the differences being deficiencies owing to waste or other causes. Any serious discrepancies must, of course, be inquired into, and the differences, when agreed to, will be written into the Stock Books.

At the end of the year the quantities and amounts of the stocks then existing as per Stock Books are inserted in the Material Accounts in the Impersonal Ledger, and the differences between stocks at beginning, plus the quantities bought, less returns, and less the stock at end of year—*i.e.*, the materials consumed—should agree, as far as quantities are concerned, with the summarised totals of the Brewer's Book, which shows the quantities of all

materials use in brewing. Thus it will be seen that there is a double check throughout.

There will nearly always be slight differences in the Hop Stock Account, as the weather and other causes affect the weight, but the percentage of waste year by year should be about the same.

With regard to the Hop Stock Book, in practice it is found convenient to have a separate page, or half-page, for every separate consignment. On the left-hand side is entered the number of pockets bought, and on the credit how and when used; thus each consignment as used up can be balanced, and the deficiency, if any, ascertained at once. In this connection the hops used for "dry hopping" must not be overlooked, and entries for same must be made in the Stock Book.

The Coal Account in the Impersonal Ledger should have a Weight column, so that year by year the quantities of coal used can be compared.

Barley bought for malting requires slightly different treatment, and a book can be so arranged as to serve the double purpose of a Barley Purchases Book and a Barley Stock Book. The debit will contain columns for Invoice No., Dates bought and received, Quantity, Price, Bought Ledger Folio, and Amount, with space for Remarks. The credit side is divided into columns for Date, Barley sent to Maltings (with columns for Quantity, Price, and Amount), Screenings sent to Stable or Sold, with similar columns for Quantity, Price, &c., and a Folio column for the Sales Day Book, or for the Journal folio, if for Screenings sent to the Stable.

There is seldom any barley left in stock at September 30th (a very common date for brewers to take stock, as it is just before the new season's barley and hops are delivered), so that this book will usually balance as regards quantities. At the end of the year or monthly Journal entries are made crediting the Barley Account in the Impersonal Ledger with the quantities and amount of barley sent to malting, and debiting Manufacturing Account, and debiting Horsekeep Account with the screenings sent to stables.

The Malt Manufacturing Account requires some attention, and, I believe, differences of opinion exist as to how to treat the various items. What is quite clear, however, is that merely debiting the Malting Account with the barley bought, wages, and all expenses, and then charging the total to the Brewery Malt Purchases Account as representing cost of malt made is not theoretically correct, because, *inter alia*, it seems very necessary to ascertain whether the malting is making a fair profit; and also it is advisable that the Beer Manufacturing Account should

year by year show results after charging the brewery with goods at the current market price.

I think the best way (as recommended by several authorities) is to open a Malt Manufacturing Account, charging it with Barley Bought (and weights of same), and all charges—such as Rent, Rates, Fuel, Wages, Utensils, Repairs, and Sundry Expenses—and credit the account with Coombs sold or sent to stables, &c., and any small quantities of malt sold. All malt so made and sent to brewery should be charged at a fair average selling price, less cost of carriage, and credited to Malt Manufacturing Account. The resulting profit or loss on the account will then appear on the General Profit and Loss Account as a separate item, and it can thus be seen whether or not the maltings are worth carrying on.

Barley is usually bought by the bushel, but malt is dealt with in quarters. There are about eight bushels to the quarter. Barley must therefore be converted into quarters before debiting to Malt Manufacturing Account.

It is usual and desirable that a Malting Book should be kept in the office, showing on one side the weights of barley received at malting (as per Barley Stock Book) in bushels, with a column for their equivalent in quarters, and on the other side a column for quantity of malt sent to brewery, with prices and amounts worked out. This gives the necessary information for making the Journal entry charging Brewery Malt Purchases Account. There will be another column for Malt Sold (in quantities), with reference folio to Day Book. As there is a very considerable difference between the increase shown in the malting of foreign barley as compared with English, the latter usually showing a larger increase, it is advisable to have the Malting Book divided into two parts, one for Foreign and one for English Barley Malted, so as to arrive at the percentage of increase in each, and thus keep a more efficient check.

Before leaving the question of Malt Manufacturing Account I may point out that, instead of charging the malt to the brewery at sale price, it is sometimes charged at cost of barley, plus, say, 5s. or 5s. 6d. per quarter for cost of malting. I, however, prefer the first-mentioned method.

The question of how to treat the Purchases and Sales of other makers' beers raises one or two interesting points. Many breweries do not sell any but their own ales, &c., but it frequently happens that at some tied houses there is a demand for Burton ales and Dublin or London stouts, more especially when it is required bottled, and it may not be good policy to ignore this demand.

In this case a separate Trading Account should be raised for Bought Beer, Cider, &c., and this will involve separate columns in the Sales Day Books, as described later. The

reason for having a separate Trading Account is so that the output of the brewery itself can be ascertained, and percentages of Materials, Cost, &c., worked out on the barrels of own beer manufactured. It is clear that these calculations would not be of practical use if the barrelage of own beer made was confused with that of bought beer, which latter has cost nothing in the way of Rent, Rates, Coal, and Duty as paid at own brewery. The gross profit from Bought Beer Manufacturing Account will be transferred to the General Profit and Loss Account; but, of course, any calculations made as to cost of delivery, travellers, &c., per barrel sold, must be made on the combined sales of own and other makers' beers.

I now pass on to the Beer Manufacturing Account. This is an account showing the value, and, if desired, the quantities, of the following materials used, and wages and duty expended:—

Malt, Sugar, Hops, Finings, Wages (Brewing Wages only), and Duty.

The total amount of output, as shown by the Brewer's Book, should be ascertained, and from it should be deducted any beer returned which has been fined and worked up again, as it is clear that practically no materials have been used on such returns, the cost of materials having been charged when the beer was first made.

Each of the above-mentioned items should then be divided by the number of barrels of beer made, and the result is the cost per barrel of each kind of material, and wages and duty. By casting the account and dividing the total by the same number of barrels the gross total cost per barrel is shown. It is very useful to have another column in which to enter the costs per barrel of the previous year, and any serious difference will at once be apparent and should be investigated.

If the *quantities* of Hops, Malt, Sugar, &c., are also worked out at per barrel an even better comparison can be made, as the question of rise or fall in the prices will not affect the quantity.

It may here be mentioned that it is not advisable to include the Brewer's Salary in the Manufacturing Account, more especially as the brewer usually assists in the management of the whole concern, and certainly superintends the stores. Cask-washers' and Carman's Wages are also not included, but only the wages of men engaged in the brewing operations pure and simple.

The total cost as per the Beer Manufacturing Account is transferred to the debit of "Own Beer Trading Account." This latter account has columns for Quantities and Cash, and commences with the stock at start (both barrels and amount), then the total of the Beer Manufacturing

Account represents Cost of Materials Consumed, Duty, and Wages. On the other side the Sales (Cash, Credit, and Bottled Beer) and Stock at end, with number of barrels against each. The difference between the Debit and Credit Money columns is the Gross Profit, and the difference between the columns for Barrels is caused either by waste, leakages, or possibly theft. The average price per barrel of the stock at beginning and end should be worked out, and any difference in average price looked into; the average sale price per barrel sold should be calculated also. In the case of Showell's Brewery, I think if the quantities had been proved, not only by the Beer Trading Account, but also by the Beer Stock Books, and compared with the output, one could hardly have failed to see that the stock of beer was either being over-valued, or that the quantities shown as being in stock were fictitious. As the Excise authorities compel certain books to be kept by the brewers, open to their inspection at any time for the purpose of ascertaining the amount of duty payable, the beer made can always be exactly ascertained, subject to a percentage for waste in racking, &c.

Further, the brewer himself usually keeps a record showing the amount actually racked, hence it can be seen what a perfect check can be exercised upon the quantities both manufactured and sold.

This brings one to the question of Beer Stock Accounts. And in this connection I wish to draw your attention to the great saving of time, and increased efficiency and correctness, that can be effected by seeing that the headings and columns for the different classes of beer are arranged in the same order on or in all the following:—

- Customers' Order Book.
- Cellarman's Order Sheets.
- Cellarman's Book.
- Carmen's Delivery Books (or Invoices).
- Sales Day Books.
- Beer Stock Books.

With regard to the Customers' Order Book, open a separate page of the Order Book for each day, so that when an order is received it can be at once entered under the day on which it is to be delivered. Columns are provided for each class of beer, and by this means the brewer can see at a glance what beer will be wanted, and can take measures in good time to replenish his stock.

A separate Order Book can be used for each delivery district, and this is very useful. The orders are then entered on Cellarman's Order Sheets, which have exactly similar columns, and sent to the cellarman. A further development of this can be arranged by filling up one Order Sheet for each separate journey, and by means of

carbon paper these can be made out in duplicate—one for the cellar and one for the carman or stableman, so that the latter can see what weight is to be carried, and arrange for vans and horses. The Carmen's Delivery Books are then filled up from the Order Book, and the Sales Day Book eventually compiled from the Carmen's Delivery Books, or from the Cellarman's Sheets.

It will be clear to you that when checking the Sales Day Book with the Delivery Books, or the Cellarman's Orders, or the Order Book, whichever system is in use, it must be a great advantage to have the details on every book or form arranged in the same order as the columns in the Sales Day Book. If Cellarman's Order Forms are used the cellarman merely enters in his Cellar Book the totals of each kind of beer sent out each day, as shown by the sheets. The Cellar Book must show weekly totals of quantities, and these should agree with the weekly totals of quantities of the Sales Day Book, thus making a most complete check on the correctness of the entries in the latter book.

The Cask Beer Stock Book, which is kept in the office, has on the left side columns for each class of beer, containing in barrels the total of each class racked; and on the other side similar columns, in which are entered the quantity sold, as shown by the weekly totals of the Cask Beer Sales Day Book, plus beer sent to bottling stores. Stock in the cellar should frequently be taken, and should agree with the balances of the different columns of the Beer Stock Books, with, of course, a fair allowance for waste. In taking stock of beer in casks great care should be taken to see that each cask contains its proper quantity, as I have known a case where a small quantity of beer was abstracted from some of the casks by the maltsters, who had access to the brewery on Sundays, when the cellarman was absent.

Beer set aside for consumption by the brewery men and refreshment of customers when they call should be entered as Sales. This facilitates the keeping of the Stock Accounts. All Cash Sales, whether of Malt, Grains, Yeast, &c., should be entered, with quantities, in the Sales Day Book direct from the Cash Book, which has the same effect as crediting the different Sales Account direct, but Cask Beer Cash Sales must be treated the same as Credit Sales, as the question of cask numbers has to be dealt with. Thus the Day Book will contain a record of every item of goods sold or given away.

In some of the smaller breweries no distinction is made between the different classes of own beer sold, but they are all lumped together in the Sales Book, and the manager relies on the brewer to tell him how much of each class of beer has been sold, based on the quantities brewed;

but this system, or want of system, is to be deprecated, as it renders it much more difficult to discover leakages, if such should take place.

The form of the Cask Beer Sales Day Book requires careful consideration, and the form of it depends upon whether the manager requires the beer divided up into the different classes of beer sold, and, if so, does he require to know the amount as well as the quantity? Personally, I see little use in showing the analysis of the amount, as the prices vary according to whether the sales are to free or tied houses or to private persons. The quantity in barrels gives absolutely the total of each kind of beer sold, and shows which are increasing, or the reverse.

If it is desired to ascertain how much trade is being done with free houses alone, and also how much with tied houses and private customers, the neatest plan is to have separate Day Books, and, if the concern is a large one, separate Ledgers as well. This would enable a separate clerk to be engaged on each of those Ledgers. Separate Debtors' Cash Books could also be provided, and each Ledger made self-balancing.

Assuming that the manager only requires to know the quantity of each kind of beer sold, the Day Book would contain the following columns:—Date, Reference, Name and Address of Customer, How delivered, followed by several columns for barrels only, headed with the description of beer—such as A.K., P.A., XXX., &c.—and a column for total barrels of own beer, then a column for number of barrels of bought beer sold. Then comes Ledger Folio and Total Amount of Invoice. On either side is analysis of sales as follows:—Amount (£ s. d.) of own beer, Ditto of bought beer, then Malt Sales (sub-divided into Quantity and Amount), Grains ditto, &c., and a column for items to be separately posted—such as Old Copper and Plant Sold, Screenings, &c.

If it is desired to show the amount of each kind of beer sold, as well as the barrelage of each, the order is as follows:—Date, Reference, Name, Address, How delivered, Total number of barrels, Ledger Folio, and Amount of Invoice; and on the credit side the analysis as follows:—Bought Beer (divided into barrels and £ s. d.), columns divided in a similar manner for Stout, Porter, P.A., XXX., &c., and then columns for Malt, Grains, and separately posted items, as described above.

A point to be noticed is that the entries in the Total Amount column in the Day Book should always agree with the total of each Delivery Note in the Carmen's Delivery Book, therefore if it is decided to have one Delivery Note for both cask and bottled ales the Day Book must follow suit and have columns for bottled ales, sub-divided into dozens and half-dozens, and, if bottles are charged to



customers, columns for number and amount, and also columns for cases, divided into sizes—such as  $\frac{1}{2}$  doz., 1 doz., &c. Then if a wine and spirit trade is carried on, with its records of jars and cases, and perhaps a trade in mineral waters also, with further records of bottles and cases necessary if one Delivery Note is used for the whole, you can imagine what huge Delivery Notes and Sales Day Books would be required.

I think it is found far better to have separate Delivery Notes, and consequently separate Day Books. The Order Book, however, can contain the whole order, whether beer, wines, minerals, &c., and thus the carmen and clerks will know what is to go out. In a large concern it is certainly better to keep things separate as far as possible. There is, however, no objection to having the Sundry Sales, such as Grains, &c., in the Beer Day Book and on Beer Delivery Notes, as the items are so infrequent.

Returned beer requires a special book, as it frequently happens, especially in the free house trade, that some publicans return what they humorously call beer, but which is really a collection of the lees from other casks and beer of other makers, with probably a dash of pure water, and they expect, or at least hope, to be allowed for the full quantity.

The brewer, or some competent man appointed by him, examines all returns and settles how much, if any, and at what price it can be credited.

The book therefore provides for Date, Name, &c., Quantity Returned, Description, Quantity allowed, Price, Amount, and Brewer's Remarks. When the amount is settled a Credit Note for the amount should be sent at once, giving details, or stating that nothing can be allowed.

The question of casks is one which requires and deserves a great deal of attention, as much capital is involved in their purchase and upkeep, and if they are not collected promptly they rapidly deteriorate or are lost, perhaps are being used by customers as receptacles for cider, or even rain water.

The carmen are frequently paid so much per cask for every cask collected by them, but it is necessary for the office staff to be in a position to compile lists of outstanding casks, and the addresses of the customers holding same, for the information of the carmen. A usual system, and one which works with a minimum of clerical labour, is as follows:—

Two books are necessary—a Customers' Cask Ledger and a Cask Register. The Customers' Cask Ledger contains the Ledger Account with each customer for casks. Each page is ruled with columns for Date sent out, Size of

cask, Number of cask, Date returned. At least four such divisions can be contained on each page, and the name of the customer will appear at the top of each column or page. It is clear that if casks have been sent out, and there are any blank spaces in the Date returned column, then that customer still has casks in his possession, and when a carman is going on a round the Cask Accounts of customers can be turned up, and a list made of all casks that should be collected. The Cask Register is a record of each cask, and there are several forms of book used at different breweries. A useful form is something similar to the Customers' Cask Ledger. The page is divided into, say, four divisions, and each division is subdivided into columns for Date out, To whom sent, Date in. At the top of each division appears the number of the cask and the size, such as  $\frac{K}{1001}$ , which means Kilderkin No. 1001. The numbers run consecutively through the book, and when the brewery is running short of a certain size of cask, say kilderkins, it is easy to look through the Register for all casks marked "K.," and see where they are lying. The Register is also practically indispensable when a cask is returned by carrier, or perhaps left at the brewery by a customer without any advice having been sent to the office.

By turning up the Cask Register it can be seen at once who had had the cask, and it can then be written off the Customers' Cask Ledger Account also. By means of this Cask Register the history of a cask can also be ascertained, and, if desired, notes in red ink can be made under the number whenever a cask is repaired, and the nature of such repair. This may lead to the discovery that the coopers are doing unnecessary work, or are making false returns as to work done. There can be no doubt that the Cooperage Department requires very careful watching, as a great amount of money is frequently wasted there.

Of late years Brewery Accounts have become decidedly more complicated, owing to the great development of the trade in bottled beer, and a few weeks ago, at the extraordinary general meeting of a large London Brewery, the chairman stated that part of the decrease in the sales was due to the competition of bottled beer. All up-to-date brewers are obliged now to push this bottling trade as much as possible to prevent outside competition, and, as a consequence, it becomes necessary to have an efficient system of Bottling, Stock, and Sales Books, to prevent waste and fraud; and owing to the practical impossibility, in many centres, of charging for and recovering the cost of bottles not returned, great care has to be given to the prompt collection of bottles.

First, a Bottling Book is absolutely necessary, so that all cask beer sent to bottling stores can be traced and checked with the resulting dozens of pints and half-pints,

and so reduce waste in bottling to a minimum. On the left-hand side are columns for Date received into stores, and Number of each cask, followed by columns for the various kinds of beer, &c.—such as Guinness, Bass, A. K., and Cider. These are denoted in barrels, with a Total barrels received column, and next to that a column for the number of dozens of pints they *should* produce. On the other side are columns for Date bottled, and for the various kinds of beer, divided into pints and half-pints, followed by columns for Stock Book Folio, Total amount bottled in pints, Surpluses and Deficiencies, and a Total dozens of pints column, which will then agree with the debit. If every barrel received is allowed a line to itself the resulting dozens will appear opposite, and the surplus and deficiency on each barrel bottled can be ascertained at a glance. This book is kept in the bottling stores.

The next book necessary is a Bottled Beer Stock Book, which must be kept in the office, to act as a check on the Bottling Book and the department generally. The Bottled Beer Stock Book can be so arranged as to have a separate page, or pages, for each class of beer bottled, with columns for pints and half-pints. The total amount bottled day by day is debited from the Bottling Book, and on the credit side is entered the total quantity of sales of that kind of beer in weekly totals, as shown by the Bought Beer Sales Day Book. If preferred, a larger book can be provided, with columns on the debit and credit side for each class of beer, in pints and half-pints, and the whole Stock Account shown in one opening. Stock should be taken every month, and differences inquired into and adjusted. Full details should be reported by the stores of waste owing to breakage or other causes.

The Bottled Beer Sales Book may be in three different forms, according to whether (1) Bottles are charged and included in the price of the beer, and monthly payment of the balance of the account insisted upon; (2) Whether bottles are charged, but monthly payment for balance of same not insisted upon; or (3) Whether bottles are not charged for at all.

As regards the first, it is found in practice that if the charge for bottles is shown on the invoice separately from the beer, and statements are sent accordingly, the customer will only pay for the Beer Account. It is therefore necessary that no distinction should be made on the invoices or statements; but it is clear that the Sales Day Book must show how much is for bottles and how much for beer. Each page is therefore divided into the following columns:—Date, Reference, Name of Customer, Cases (divided into 1 doz., 2 doz., &c.), Ledger Folio, Total of Invoice. Then follows the Analysis columns, first for Bottles, Quantities, and Value, followed by those for Beer Sales (divided into, say, Guinness, Pints, Half-pints,

£ s. d.; A. K., Pints, Half-pints, £ s. d., and so on). On the same page are columns for Returned Cases and Bottles (pints, half-pints, £ s. d.), as the carmen will nearly always bring back empties. Full bottles returned will be entered at the end of the book, or in a Returns Book.

In the second case the columns are the same, except that another column is introduced after the column for Analysis of Sales, and headed total of Beer Sold, and the column for "Total of Invoice" is omitted. This is because the amount for bottles and the amount for beer are shown separately on the Invoice and Delivery Note, and will be shown separately in the customers' accounts in the Sales Ledger, which Ledger must be provided on both sides with columns for Cases and Jars, Bottles, Pints and Half-pints, with £ s. d. column, and a Sundries column £ s. d. only.

In the third case the book is the same as No. 2, but there will be no money column for the bottles, only quantities, and on the Returns portion of the page no money column at all.

I draw your attention to one very important point when bottles are charged and paid for, as explained in the first case referred to above, and that is when bottles are stated by the carman to have been returned and are shown on his Credit Note counterfoils. The bottles *must* be seen and counted by some other person or persons, as they are equivalent to cash, and a carman, by collusion with a customer, might credit the latter with bottles which had never been returned, or might retain cash paid him, and make an entry for bottles returned to make up the deficiency.

The money totals of the bottles sent to customers under the first two cases mentioned are credited to a "Bottles Charged to Customers' Account" in the Impersonal Ledger, and this account debited with the value of all returned bottles. They must not be credited and debited to the asset account for "Bottles," as the bottles have not really been sold.

I think I have now exhausted the list of special books of account necessary at a brewery, but there are several very useful statistical and other books in daily use. I propose to refer briefly to those of a more special nature.

*Lease Book*, for leases granted by the brewery to tenants. This book contains full details of leases. The book should contain room for notes as to where the deeds are, as they may be deposited with the bankers or trustees for debenture-holders as security, or have been sent to the solicitors temporarily. If there are many houses belonging to the brewery a separate page should be devoted to each year, so that a lease expiring in, say, 1910, could be entered on the page set aside for leases expiring in that year. It is very important for the management to know when a lease is

reaching its limit, as probably the tenant's account for Beer, Rent, Loans, &c., should be reduced unless security has been deposited.

If the brewery possesses leaseholds, a record of these should be kept, with a separate page for each year. The manager can then easily see when the leases will expire, and, if he thinks necessary, open negotiations in good time for their renewal, or for the purchase of the property.

*Customers' Quarterly Balances Book.*—If the company deals in wines and spirits and mineral waters probably separate Sales Ledgers will be kept. In addition to those Ledgers and the Beer Ledger there are often separate Ledgers showing loans and rents. Under those circumstances it is clear that in the aggregate a customer's account may gradually increase to a dangerous extent, and it is only by bringing all the items together at stated periods, and finding the total owing from each customer, that a proper supervision can be exercised. The Quarterly Balances Book is designed for this purpose, and contains columns for the following, with Folio column for each:—Beer (sub-divided, if necessary, into Bottles and Money), Wines and Spirits, Mineral Waters, Loans, Interest, and Rent, with a column for Total amount owing.

A space is left after the total for such notes as "Date of expiration of lease," Security, or Manager's instructions as to the steps to be taken to reduce the total owing.

*Grains.*—A careful check should be kept on grains, as otherwise opportunities occur for leakage where small quantities are sold for cash. The book has columns for Date, Total Grains from Mash (this checked and signed for by brewer), Date sold, To whom, Quantity, Price, and money columns for Cash Sales, Credit Sales, and Grains sent to Stable. A column is also provided for Quantity destroyed (if any). All grains sold for cash should be entered in a Duplicate Cash Sales Ticket Book, and Credit Sales and Sent to Stable, &c., in a similar book. The carbon copies are given to the customers, and no grains should be delivered by the man in charge, except in exchange for such tickets. When grains are sold by contract the matter is much simplified.

Now with regard to some of the Ledger Accounts themselves, Discounts on Sales have a separate account, which is always a very heavy one in a brewery, and a reserve must be raised for Discounts on Debtors as near the actual figure as possible. An average rate is very difficult to arrive at, unless debtors for free trade are kept distinct from private and tied trade; and, again, such accounts must not include Charges for Bottles, Loans, and Rents, as these latter are not subject to discounts. The most accurate method is to note the discount to be allowed against every debtor, or group of debtors, or have the list of balances

provided with columns headed 25 per cent., 10 per cent., 5 per cent., &c., and place in such columns the amounts which are subject to those discounts.

A separate account should be kept for Income-tax, Schedules A and D, as these must not be charged against profits when making a return for income-tax. Another income-tax point is that no repairs, rents, &c., connected with houses not in own possession are to enter into a return under Schedule D, therefore separate Rent Accounts should be kept for *each* property let, to which Repairs are also charged.

Accounts should be opened for each kind of sale of residual products—such as Grains, Spent Hops, &c.—then any decrease in the amounts or the entire absence of certain sales would attract attention.

Accounts for carriage inwards must be carefully analysed, and the carriage on materials charged to their proper Material Accounts—Carriage on Plant to Plant Account, on Casks to Casks Account, and so on.

If large plate-glass mirrors and tablets are fixed up by the brewer in licensed houses a separate account should be opened for these instead of placing them to Advertising Account, as, if desired, the cost can be written off over a term of years. Of course, satisfactory evidence must be produced to the auditors to prove that they remain the property of the brewery.

The form of the Profit and Loss Account calls for no special comment, except that costs of delivery should be grouped together, and include Stable Wages, Vans and Harness Repairs and Depreciation, Horses (Depreciation, Fodder), Carriage Outwards, &c. Bottled Beer Department Expenses, and Depreciation of Bottles, Stoppers, and Plant should be grouped also, as should Cooperage Department, including Cooperage Wages and Materials, and Depreciation of Casks.

I have not dealt with the many points connected with Managed House Accounts, as one could almost give a lecture on those alone. I may merely mention that separate Profit and Loss Accounts are opened for each house under management, debited with beer supplied (usually at tied house prices), and the discount credited each month or quarter. Stock is taken periodically by an official from the brewery, and constant supervision is absolutely necessary.

Accounts are opened in the Sales Ledger for beer supplied to men and given away to customers, and entries for same passed through the Sales Day Book. The total amount is transferred at the end of the year to an Impersonal Ledger Account.

If a bottled beer trade is being carried on, the cost of

labels, &c., should be kept distinct from the ordinary Stationery and Printing Account, and corks for bottles should also be kept distinct.

The arrangement of the Balance Sheet calls for no particular comment, except that the *Cr.* balance on the account for "Bottles Charged to Customers" should be deducted from the total amount of the debtors, in the same way as Reserve for Bad Debts is treated. The reason for this is that the debtors' accounts contain charges for bottles, and such debits will not eventually become a cash asset, as the greater number of the bottles will be returned to the brewery in due course. This arrangement is particularly necessary when the bottles are charged for and included in the price per dozen, and monthly payments for same insisted upon. When the bottles are charged for and shown as separate items in the statements sent in, and therefore shown in separate columns in the Sales Ledger, of course the debtors for bottles, as apart from beer, will be set out on the Balance Sheet separately.

I now come to the question of Audits, but my remarks must necessarily be brief. I do not propose troubling you with any remarks as to the points common to most audits and stocktakings, but shall deal only with those of a rather special nature, or peculiar to breweries.

First, as regards Stocktaking. The question of beer in course of manufacture must not be overlooked. It is best to leave it entirely out of the stock, as otherwise the various Beer Stock Accounts will not agree with the total output, as the beer will not have been debited to such Stock Book. In this case, of course, the cost of materials used, or partly used, for the beer in course of manufacture must be treated as though such materials were in stock.

As an alternative the beer when finished, say, on October 3rd, can be taken into stock as though it were finished on September 30th, and the Stock Accounts debited, and the output increased accordingly. The actual stock of materials need not then be adjusted in any way.

The Debtors for Beer, Rent, Loans, and Interest will require very careful watching. It is not uncommon to find that in a large town when the tenant of a small private dwelling, or part of one, has exhausted his credit with one brewery, he promptly starts running an account with another firm, or even, having dealt off one agent, goes to another agent of the same firm, and then eventually owes a sum far greater than he can possibly pay.

It not infrequently happens that the reason why accounts for goods sold by agents do not get paid promptly is because the agent has bought goods for himself from the customers, and is practically running *contra* accounts with them. The sooner such an agent is dismissed the better,

as it is certain that the interests of the brewery will not be best served by an agent in pecuniary difficulties. Bad debts will result, if nothing worse.

The barrellage, as shown by the Beer Trading Account, should be carefully verified by comparison with the brewery books and certified stocks, and the waste ascertained, which in turn should be compared with the total deficiency as shown by the Beer Stock Book. The percentage of waste on the quantity brewed should be calculated and compared with that of previous years.

The Grains and Yeast Sales should be verified in whole or in part, and the Grains Book and Grains Cash Sales Counterfoil Book examined.

The cost per barrel of all materials used must be calculated, and inquiry made as to the reason of any increase or decrease. Also by working out the Costs of Delivery, Travellers' and other Expenses, &c., many interesting points may arise, and should be brought before the management, who usually much appreciate that part of an auditor's work, whatever they may think of the vouching and general routine work of an audit.

Stocks of hops lying at factors, or, as is now quite common, at cold stores, should be certified to by the persons in whose charge they are.

The totals of all accounts for sales of by-products should be carefully compared with those of previous years, and percentages of such, based on the amount of beer manufactured, will be found very useful, especially in detecting fraud or neglect.

The liabilities for the last month's Duty, Travellers' and Agents' Commission, Rent of Cold Store, &c., must not be overlooked, and particular attention should be devoted to ascertaining if there are any outstanding accounts for repairs and alterations to houses situated some distance from the brewery. I have found that in country districts the builder and decorator is very slow in delivering his accounts for work done, especially if he has an account open against him for beer bought from the brewery.

The question of the value of loans to tenants on the security of licensed houses is at present attracting a very great amount of attention on the part of investors in brewery concerns, and it is likely to do so still more in the future. One has only to read the recent reports of some of the large brewery companies to see that there is very real cause for anxiety. Loans have been advanced to tenants or owners of houses during the time of the boom in licensed houses, when values had become absurdly inflated, and now it is found that the tenants are unable to reduce the amount of such loans, or even to pay the interest in full. No doubt this has been brought about

partly through the recent depression in trade, and partly through the gradual increase in temperance on the part of the general public, but it is a fact that during the boom in question, when the same houses in London were changing hands almost daily, each time at an enhanced price, tenants borrowed, and brewers granted large loans by which the tenants were tied, and which enabled them to enter into possession, when it was clear to impartial observers that the net profit on the trade done at many of the houses was not sufficient to pay the interest on the loans, let alone the private expenses of the tenants. Many brewers thought they were threatened with great losses of trade when they saw the free houses being bought by their rivals, and so matters went on until the inevitable reaction occurred, and now many of them find themselves with loans on which they cannot obtain the full interest, and when they try to obtain repayment of the capital are faced with the fact that the houses at present are not worth even the amount of the mortgages.

I think with the improvement in trade the prices of houses will go up, but even then probably many of the properties will never reach the extraordinary prices of a few years back.

I have before me the report of one of the large London breweries, owning 1,200 houses there, and they admit a loss on loans alone of no less than £1,700,000, with a further huge capital loss owing to the depreciation of the prices of licensed premises, and they now propose to reduce the capital by no less a sum than £2,389,057, being 75 per cent. of their deferred ordinary capital. Incidentally, they attribute part of the decrease in sales (about 14 per cent. compared with 1900) to the competition of the bottled beer trade, which emphasises my point that breweries must more and more develop that branch of their business, and those who have not taken it up will be practically obliged to do so.

Well, gentlemen, this question of the value of loans to tenants, as shown by the books, is a very serious one for auditors to consider, as at many brewery audits, certainly in London, the point will arise, and doubtless you will consider it necessary to draw attention to it in your report to the shareholders, unless the directors or owners have dealt with the position in a manner that meets with your approval.

I would draw your serious attention to one very ingenious method of attempting to hide the true position from auditors and shareholders alike. I have reason to believe it is not confined to one brewery alone, and it is one by which it is perhaps hoped to avoid the drastic measures adopted by the brewery company referred to above.

This method is simple. A tenant with a heavy loan at 5 per cent. comes to the manager, and informs him he cannot continue to keep up his interest payments, and cannot repay part of his loan. Knowing the house would not fetch the amount of the loan, and that another tenant cannot be found who will take over the loan, he informs the tenant that his interest will be reduced to 2½ per cent., but that the loan will remain at the same figure. Now, this can only mean one thing—that is, that the loan, as a loan, is worth much less than the figure at which it stands on the books, and it behoves auditors to see that they are not deceived as to the value of such loans because interest continues to be paid upon them.

In this connection I should, perhaps, mention that the loans made by London breweries must apparently be divided into three classes. I say London breweries, because I am not certain whether the system adopted, unwillingly, I believe, by the London brewers is in vogue in other towns or districts.

The three classes I refer to are:—

- (1) Ordinary Loans, say, to assist a new tenant.
- (2) Loans to Owners or Tenants of Free Houses to obtain their trade.
- (3) Loans to Tied-house Tenants on Security of Freeholds. This head includes the greater number of those which are causing so much trouble at present. They arise because the magistrates usually insist that the license holder shall have a substantial interest in the house itself. Therefore the brewers sell the houses to the tenants, and lend them the money with which to purchase such houses. In other words, they are mere book entries, crediting the Property Accounts and debiting "Tenants' Loan Accounts," and it remains so, except as regards payment of interest, until the tenant leaves—or fails. A small deposit is usually made by the tenant.

It is now contended, and I have seen counsel's opinion on the subject, that if the tenants cannot continue to pay interest, and the loans, or part of them, have to be written off, then, instead of treating the items as revenue losses, they may be written back to the original Property Accounts as representing the cost of such properties. This is probably correct, so long as the sales to the tenants do not exceed the original prices paid for the properties.

I had intended to give you a few further remarks upon audits, and on the question of compensation and levies under the new Licensing Act, but I am afraid I have already trespassed enough on your patience; but my only excuse is the extreme difficulty of compressing into a paper of reasonable length the accounts of such an extensive and complex business as that of a brewery.

If any of you think those questions of sufficient importance, and desire to know more about them, and to study the various forms, I can only refer you to the book I have written for "The Accountants' Library Series," which will be published shortly, as one lecture cannot cover anything like the whole ground.

## New York State Society.

### The Question of Admitting Outside Members.

At the December meeting of the New York State Society of Certified Public Accountants the extension of membership privileges was the subject of discussion. Speeches were made by Messrs. John R. Loomis, How, R. M. Chapman, Suffern, Ryan, Gottsberger, Weiss, Rose, and Cook. The final vote, by a large majority, rejected the proposed amendment to the bye-laws admitting to membership in the Society Certified Public Accountants of other States. About fifty members were present, President Farquhar J. MacRae in the chair.

Mr. Loomis, who proposed the amendment, spoke as follows in its favour: Mr. President, at the last meeting of our Society, conforming to the requirements of the Bye-laws, I gave written notice that it was my intention to offer, at the next regular meeting, a motion for an addition to be made to Section 3 of the Bye-laws having to do with the qualifications for membership, such addition to be, "Any person holding a Certified Public Accountant certificate under the laws of any State other than New York, and who is in the active practice of his profession as a public accountant, and who resides or has a place of business in the State of New York, may become a member of this Society." I therefore, Mr. President, now make this motion: That Section 3 of the Bye-laws of this Society, having to do with the qualifications of membership, be amended by adding the words, "Any person holding a Certified Public Accountant certificate under the laws of any State other than New York, and who is in the active practice of his profession as a public accountant, and who resides or has a place of business in the State of New York, may become a member of this Society," the section as a whole when amended to read: "Any person holding a certificate from the University of the State of New York as a Certified Public Accountant in good standing may become a member of this Society. Any person holding a Certified Public Accountant certificate under the laws of any State other than New York, and who is in the active practice of his profession as a public accountant, and who resides or has a place of busi-

ness in the State of New York, may become a member of this Society. The application of any person desirous of becoming a member must be approved in writing by a majority of the Committee on Admissions, and such person may then be admitted by a majority vote of the Board of Directors at any meeting." In submitting this motion for the thoughtful consideration of the members present, I should like to state briefly a few of the reasons influencing me. I am a firm believer in the importance of cultivating and encouraging the idea of fraternal and reciprocal relations between the various C.P.A. Societies of the several States. New Jersey has recognised this principle of reciprocity and has incorporated it in its law. Illinois recognises it also. Ohio, in the draft of its proposed Bill, recognises this principle more broadly than any other State has done, going so far as to make provision for the issuance of a certificate as a Certified Public Accountant to any person holding a valid certificate as a C.P.A. under the law of any other State. Our State does not recognise this principle, much to our regret. I say "our regret" for the reason that not long ago our board of directors gave much thought to the advisability of asking the Legislature to so amend the law as to permit the Board of Regents to issue certificates to any person holding a similar certificate from any other State who had an office for the conduct of his business in this State. It did not, however, seem good policy at the time to press this matter. I feel great respect for the certificate issued by any State. For this reason, I have no objection to the use by anybody of his title, without qualification, as C.P.A. anywhere. We have within our State a few gentlemen actively engaged in the practice of their profession as public accountants who hold certificates as C.P.A.'s under the laws of other States, whose chief places of business or residences, or both, are here. They are subject to practically no control or restraint through any provision of our law or rules and regulations of our Society. These gentlemen are of the highest character and ability, and are an honour to the profession. No men have worked harder or accomplished more for the advancement of the profession than they, yet there is no way by which they may obtain certificates under our law, or become eligible for membership in our Society, except by submitting to a certain prescribed examination. It does seem to me that if we meet this matter in a liberal and generous manner, and give such persons the opportunity of becoming members of our Society, we will have accomplished much that is desirable which would take years to accomplish through legislation. The moment such persons become members they are under the control of the Society, and subject to its rules and regulations. One great object of our organisation is the protection and control of all C.P.A. certificates, and how can this be done except by

bringing all under its rules and regulations, and subject to its discipline? The position assumed by this Society in this matter will, I believe, be followed by other Societies, and we shall be able to accomplish among ourselves much towards advancing the interest of the profession and the protection of our certificate—much that we must fail to accomplish if we waited for necessary changes in our law. Other Societies look to the New York State Society to take the lead, and they have the right to expect that we will adopt a liberal and generous policy towards all persons holding certificates under the law of other States who may come into our midst and take up their abode with us. In my judgment this is a most important motion, and if favourably considered I sincerely believe will work greatly to the advantage of the Society and to the best interests of the profession.

The objections of those opposed to the amendment were expressed as follows by

Mr. H. R. M. Cook: Mr. President, it is usually a great pleasure to agree with any proposition suggested by my friend Mr. Loomis. He is one of the altruistic kind, who is always endeavouring to do something for the benefit of mankind in general or else of some one particular man. I have endeavoured at times to follow Mr. Loomis and to endeavour to emulate him in his noble ideas, but he has gone so far beyond me in this particular instance that I confess I am behind in the race. Mr. Loomis is of so altruistic a nature that I believe he would give away willingly everything that he possesses—his substance, his best plans; in fact, everything of value, in order to benefit his friends. There is, however, a limit to the altruistic side of my nature, and I hesitate when I am practically requested to take leave of my common sense, and donate it broadcast without, at any rate, some slight return for the sacrifice. Mr. President, the amendment offered by my altruistic friend seeks to admit into this Society any person from any State, provided he hold a C.P.A. degree from some other State, and may reasonably allege that he is doing some business in New York State. The prestige of this Society is given to such a person subject to the mildest conditions and restrictions, and the mantle of fame and glory is clasped around his shoulders on the ground that it is broad-minded and a matter of policy to include in this Society all alleged Certified Public Accountants, no matter what their qualifications might be, as their number would offset any discrepancy in that particular. The result of the adoption of this amendment might permit the admission into this Society of many persons whose professional, educational, and fundamental qualifications are much below the standard or plane prescribed and adopted by the University of the State of New York as necessary for a practitioner to possess in this

community. It is a glorious and indisputable fact that the standards adopted by New York State are far higher in every respect than the meagre requirements of the State Boards of Examiners and other bodies belonging to other States. The Certified Public Accountant of the State of New York is under the wing of the highest educational body in the State, the University of the State of New York, and no other educational body in this State has any power to issue a similar degree. Let us pause a moment and reflect upon what might happen if this unwise amendment should be perpetrated upon us. The indifferent, or even incompetent, practitioner from Oshkosh, Painted Post, North Dakota, Oklahoma, or some other wild and woolly spot, who has succeeded in obtaining from the wild and woolly board of examiners of his wild and woolly State a piece of paper alleging his competence as a public accountant might be admitted into our midst, provided, of course, that he appeared to be a nice fellow and knew enough to conjoin my altruistic friend Mr. Loomis and his friends on the Admission Committee and Board of Directors of this Society. As to his actual qualifications, I doubt very much whether any examination would be made in order to ascertain his merit and fitness. We all know that as yet legislation controlling professional accountancy in other States is in only a crude condition; and I believe that it is possible in some places for a man to fall over a stick, turn a somersault, jump through a hoop, dance a hornpipe, or perform some *delsarte* movements, whereby he is considered a fit subject upon whom to confer a C.P.A. degree. The possession of a degree of this character should not admit a person into this Society on the same plane as those who have regularly obtained their degrees from the University of the State of New York. In saying this I do not wish to be understood as meaning that there are no worthy and qualified practitioners outside of the State of New York. On the contrary, I know of men of great experience, and whose qualifications are no doubt fully equal to our own. But what I do maintain is this, there is no difficulty whatever in such a man obtaining in the State of New York in the regular way from the constituted authorities the same degree that we hold. All I ask is that any persons admitted into this Society shall possess the same qualifications, both professional and educational, which we are required to possess under the laws, rules, and regulations governing the profession in the State of New York. To permit less would be a retrograde movement on the part of this Society, which would belittle it in the estimation of the entire community, and, further, the Society would stultify itself completely. This Society has always stood for the uplifting of the professional plane, and as an instance of this I need only refer to the existence of the School of Commerce, Accounts, and Finance established by the efforts of this Society in con-

nection with New York University. Of what use would be this technical school to the accounting profession of the State of New York, the object of which school is to educate young men for the C.P.A. degree of New York State, if this Society were to admit to membership the indifferent or quasi-incompetent practitioner, and thereby raise him seemingly to the status of those who have obtained the C.P.A. degree in the State of New York? Such action on our part would be a direct blow to the New York University School of Commerce, Accounts, and Finance, of which we acknowledge paternity, the usefulness and necessity of which we should all acknowledge and endeavour to foster, encourage, and support. I feel that the amendment offered by Mr. Loomis is in conflict with the professional and educational conditions prevailing in this State, and in order to render his amendment more in harmony with the situation, I present herewith an amendment to his amendment. The combined amendments, if adopted, would read as follows:—Any person holding a Certified Public Accountant certificate under the laws of any State other than New York, and who is in the active practice of his profession as a public accountant, and who resides or has a place of business in the State of New York, may become a member of this Society, provided that the University of the State of New York will endorse, in writing, the certificate of said person to the effect that such certificate is satisfactory to said University, and is equivalent to the professional and educational standards prescribed in the State of New York. In presenting this amendment I feel fairly sure that my friend Mr. Loomis will offer but slight objection, for the reason that I believe, generally speaking, he stands for a high professional plane. It is only recently that Mr. Loomis while acting as State Examiner had a difference of opinion with the Board of Regents of the University of the State of New York as to the granting of the degree of C.P.A. to certain persons whom the Board of Regents deemed worthy and well qualified, and who were not considered as such by Mr. Loomis as State Examiner. Whatever may have been the merits of the contention, the Board of Regents control the situation, and I mention this instance in connection with the particular matter under consideration in order to evidence to this Society Mr. Loomis's position in maintaining a high plane. In this instance his idea of the professional plane appears to have been higher than that of the Board of Regents, and so positive was he, and so fervent of purpose, that, figuratively speaking, he was willing to shed his blood to maintain his principle; in other words, he resigned his position as State Examiner rather than recede from his point. This Society might be thrown into a somewhat paradoxical or anomalous condition by the adoption of the original amendment. We all know that in the recent process of federalising the American Association of Public

Accountants the votes of the outside States outnumbered the votes of the State of New York by, I think the proportion between 400 and 152. What a peculiar position for the New York State Society of Certified Public Accountants to be placed in at some future time, if the C.P.A.'s of outside States were able to control the professional affairs in the State of New York. And such a condition would be not only possible, but probable. While I can appreciate the benefits of the prestige and other considerations which would accrue to persons entering from other States, so far I have not heard this evening one single benefit mentioned which would accrue to the C.P.A. profession of the State of New York. In listening to the remarks which have been made here to-night, I have been struck forcibly by one point which seems to me to stand out as clear as the noon-day sun. This Society appears to contain two distinct classes of members: on the one hand, there are those who regard this institution as merely a club, organised for social and convivial purposes; while, on the other hand, there is a strong percentage of members of a more serious turn of mind, who look upon this Institution with some degree of veneration and respect, as representing the professional side and educational side of things; in other words, this latter class regards it as equivalent in a modest sense to the Bar Association. Personally, I stand with the last-mentioned class, although possibly that class may be in the minority. I have no excuse to offer for allying myself to that particular class, because I believe its principles to be right, and I possess the courage of my convictions. It is unnecessary, I think, for me to further debate this question, and in conclusion I will only ask by way of summing up that my friends who think with me in this matter shall demand that no person be admitted to membership in this Society unless he possesses fully all the qualifications which we are required to possess, and that his certificate be endorsed and approved by the Regents of the University of the State of New York as being fully equal in professional and educational value to those certificates which are issued within our own State.

This meeting and discussion has evoked the following correspondence:—

The arguments as to the general desirability of education and the statement that the New York C.P.A. degree is an educational one are quite in order and are, of course, not disputed, but they lose their force when we consider the fact that many of the New York C.P.A.'s who possess the degree *through educational means* are either juniors or bookkeepers, while the greater number of successful C.P.A.'s in active public practice are those who secured their degrees under the waiver clause. It is of interest to note in this connection that of all the States with C.P.A. laws New York is the only one which found it necessary to extend the time limit of the waiver clause.



It appears, however, that the *real* reason for exclusion is at last disclosed. There may be a melon cutting some day and it may be too small to go around, therefore the accountant who came to New York ten years ago cannot afford to give a slice to the accountant who moved in three years ago, but he must look out for himself and the "educated ones" solely.

I am afraid the "New York C.P.A." is doomed to disappointment. Under such conditions there will be *no melon at all*. No law so obviously unfair will pass the Legislature when its real purpose is shown. The majority of the more prominent men at Albany are lawyers, and it will be very easy to convince them that any legislation granting special privileges to New York C.P.A.'s is distinctly unjust to a large number of the citizens of the State. When the proposed legislation is asked for, we can imagine the smiles of the legislators when they are shown the true inwardness of it, and the "little joker" appears.

For many years in England, every effort to have such a Bill passed by Parliament has been unsuccessful in spite of the strength of the Institute, and we are evidently off on the same destructive game in spite of all the warnings we have had from both the English societies.

Surely it cannot be claimed that accountancy in a few years has passed law in its educational preparation. Yet the lawyer from another State can come to New York and practise law without restriction, provided he can show the Court here that he has satisfied the Courts of another State as to his qualifications and character. It is not deemed necessary that he should undergo another examination rudimentary in its nature.

After a rather careful survey of the situation at Albany I believe that with good management and united support legislation can be secured to prohibit the practise of accountancy by others than those properly qualified, and that the time is at hand to agitate for the compulsory audit of corporate books; but, if harmony does not prevail among accountants themselves, it will be suicidal to make the attempt. It need hardly be urged that an unsuccessful movement would be most harmful to the whole profession.

It is, of course, obvious that if the present attitude of the New York State Society continues another society in this State is inevitable. Certainly the "New York C.P.A." will not object to the "outside" accountants seeing each other once in a while, and it is just possible that after a while the meetings of the outsiders would be as interesting from the standpoint of accountancy papers and discussions as the meetings of the present organisation.

On certain other points the "New York C.P.A." needs light—namely, the legal residence of the "outside" accountants and their eagerness to escape jury duty. As to the

former, it is well known that a number of them are New York citizens and taxpayers, and one at least is willing to do his duty as an American citizen and serve on a jury when called.—Very truly yours,

ROBERT H. MONTGOMERY.

Suppose this amendment to the New York State Society's constitution is passed. What a bright and encouraging outlook for us youngsters, with our Final Examination only a few years behind us, who want to begin practising on our own account! Until every State in the Union has passed a C.P.A. law—possibly twenty or thirty years hence—we will have to compete with the fellows—they certainly are not accountants—who received their certificates in some other State under the waiver and whose experience, at the time they made application for a certificate, consisted of having checked, during two or three evenings a week for the required number of previous years, the postings of a set of books other than the ones they were engaged on during the day as bookkeepers. I know of at least one New Jersey and two Pennsylvania certificates which were granted upon this kind of wonderfully broadening "experience." Had I been able to foresee the drift accounting matters have taken I could have saved nearly two years in time and several hundred dollars in money by securing a certificate in my native State (Pennsylvania) before coming to New York.

I agree with *The Journal* when it says, "They [the New York State Society] have . . . absolutely nothing to 'gain by pursuing a policy of exclusion,'" provided the requirements of the State which granted the certificate to the person wishing to come to New York to practise, are as high as those of the State of New York, and provided that such persons have *met those requirements* and not sneaked in through the back yard or crawled under the fence. We are entitled to a "square deal," and we are certainly not getting it if, after devoting several years to study, and passing all the examinations, both academic and professional, we find ourselves in no better position than the gentlemen from New Jersey and Pennsylvania referred to above. Ohio is the only State which has the right idea.

The only thing that I know of which affords the least bit of encouragement to the young New York accountant, is a conversation which took place about two weeks ago in a downtown law office. A lawyer retained by one of the parties in a case which has occupied considerable space in the newspapers recently, needed the assistance of an accountant. One of the gentlemen recommended to him, when he called, sent in his card, which read, "John Blank, Certified Public Accountant, 3,842 Wall Street, New York." The conversation was substantially as follows:—

"Are you a Certified Public Accountant of New York?"

"Yes."

"Did you pass the examination?"

"Yes."

"You are all right then. We don't want any of those fellows who got their certificates under the waiver clause."

Yours truly,

M. S. MOYER.

## Income Tax Reform.

(From *The Chamber of Commerce Journal*.)

ON December 27th a general meeting of the Edinburgh Chamber was held under the presidency of Mr. W. B. Blackie.

In regard to the Report of the Departmental Committee on Income-tax, Mr. James Currie moved the following resolution:—"That this Chamber, having considered the 'Report of the Departmental Committee upon Income-tax, dated June 1905, regrets that the subject has not been more exhaustively dealt with; and, while generally in favour of the changes proposed, is very strongly of opinion that the relief afforded by Section 133 of the Act of 1842 (as amended and applied in practice in accordance with the statement of the Chancellor of the Exchequer in the House of Commons on December 21st 1888) should be maintained in the case of all incomes assessed upon a three years' average, and that the repeal of the section would be a hardship in the case of precarious and fluctuating incomes, and an uncalled for disturbance of the incidence of the tax." With regard to the recommendation contained in Section 110 of the Report, which urged the repeal of the 133rd Section of the Act of 1842, Mr. Currie said that by the provisions of that section as administered in practice an income-tax payer, who found that his actual profits for any year were less than the estimate upon the basis of which he had paid tax, was entitled to have his assessment reduced either to the actual profits of the year or to a new three years' average, including the year of assessment, whichever of these methods gave the highest assessable income. He would not go into details, for there were probably few of them who had not at one time or another passed through periods of such diminishing income. It was the one ray of light which shone on such dark days that those ruthless councillors desired to cut off. It was true that if they limited themselves to the consideration of the relation of the individual taxpayer to the Government, it was not easy to justify that provision on grounds of abstract justice. The relief was, of course, altogether one-sided, and it was intended to be one-sided. It was always in favour of the taxpayer, and never by any chance in favour

of the Crown. And the anomaly was greater still in the case of incomes originally estimated on a one year's or a five years' basis. Yet even on the question as between taxpayer and Crown it might, he thought, be urged that in the interest of the maintenance of that convenient source of national revenue, the burden should be adjusted to the shoulders that had to bear it, and should be made as light as possible, even in cases where abstract justice might not appear actually to demand a concession. The operation of the provision, defective though it might be in some respects, did not in many cases secure a lightening of the burden in the years when it would otherwise be heaviest, and even though that might be at the expense of other taxpayers—as every possible concession must be—the price was more than paid by the avoidance of a feeling of irritation and exasperation, which, even though unreasonable, might, if permitted to rankle without much consolation, spread to such an extent as to threaten the security of the tax itself. But there were also various practical difficulties in the way of the direct establishment of a differential tax in favour of those incomes which were in their nature precarious; but it would be perceived that indirectly the result was to a large extent achieved by the operation of that very section of the statute, for the taxpayers who were benefited by it were those whose incomes fluctuated rather violently, and these were in the main those whose incomes were precarious, and derived from professional or commercial exertion, as compared with those whose income was derived from the profits of a stable investment. Therefore, as between these two classes, the provision in question tended towards an equitable and appropriate variation in the incidence of taxation. He was far from claiming that the present arrangement was a perfect one, but it should not be departed from until at any rate some other form of compensation was presented to the class of income-taxpayers referred to.

The motion was seconded by Mr. James Cormack, and adopted, it being decided to send a copy to the Treasury, and another to the Associated Chambers of Commerce.

## County Court Juries.

It is not always for their opinions (says the *Morning Post*) that County Court juries are wanted. It is often for their prejudices. The chances are that they will take the side of the poor against the rich, of the employed against the employer, at any rate if in a big way. A man who has been knocked down by a carriage and pair will, if wise, have his jury; if the vehicle be the only cart of some struggling tradesman a jury may do him more harm than good. The County Court jury, in short, is used less as a shield than as

a sword. For the strict purposes of justice it is of little value. Nor is it unpopular only with litigants; some of the Judges openly shun its company, while the authorities cannot regard its working as ideal since within the last few months they have increased the number of jurymen from five to eight, which means that they take a little longer to come to a decision and have to sit closer together. Now, there are many cases in which a jury is desirable, and although the suggestion of the Judicature Commissioners that the jurisdiction of the County Court over common-law actions should be unlimited, the defendant having the right to demand a transfer to the High Court, may never be adopted, it is certain that every year will increase the number of heavy County Court cases in which a competent jury would be of assistance. Why should the County Court jury not march with the times? Why not have in the County Court, as in the High Court, a special jury whose aid might be invoked in cases of difficulty? Some of the County Court Judges are abler than are some of the Judges of the King's Bench Division, and given, in proper cases, a trustworthy jury, many an important action could be as well tried in the inferior Courts as elsewhere. As we have said, the gain would not be so great in London, where the only difference between a special jury and a common jury is often the cost. In the country, however, a special jury in the County Court might be found of great advantage.

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### Personal.

MR. FRANK BLACKLOCK, Certified Public Accountant, has removed to Law Building, 225 Courtland Street, Baltimore, Md.

MESSRS. THOS. H. BARRON, A.C.A., and ARTHUR H. BARRON, A.C.A., A.S.A.A., announce that the respective professional practices conducted by them at 1 Minster Gates, and 13 New Street, York, have been amalgamated under the style, or firm, of BARRON & BARRON, Chartered Accountants, as and from the 1st January last. Their head office will be at 1 Minster Gates.

MR. CYRIL M. BUTTON, F.S.A.A., of 63 Moorgate Street, London, E.C., announces that Mr. ARTHUR H. STEVENS, A.S.A.A., has entered into partnership with him, and that the business will be carried on under the style of BUTTON, STEVENS & Co.

MESSRS. SYDNEY COLE, JAMES & Co., of 1A Frederick's Place, Old Jewry, E.C., announce that they have taken into partnership Mr. A. M. ROZELAAR, A.C.A., who has been for several years with MESSRS. MAURICE JENKS & Co. The practice will be continued under the style of COLE, JAMES & ROZELAAR.

MR. E. H. FLETCHER, F.C.A., has joined Mr. T. I. DENMAN, F.C.A., of Bank Chambers, Yeovil, in partnership, and the practice will be continued at that address under the style of DENMAN & FLETCHER.

MR. LEONARD STOWELL, A.C.A., and Mr. HUGH BAYLEY, A.C.A., announce that they have entered into partnership, and that they have commenced to practise at 62 King Street, Manchester, as Chartered Accountants under the style of STOWELL & BAYLEY.

MESSRS. PARNABY & GARSIDE, Chartered Accountants, announce that they have removed to 46 Gresham Street, London, E.C.

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### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Feb. 2nd, was 197, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 112; Deeds of Arrangement registered, 85. The respective numbers in the corresponding week of last year were: Bankruptcies, 97; Deeds of Arrangement, 93—total, 190; being an increase of 7. The total number of commercial failures recorded during the 5 weeks of the present year is 820; the total number recorded in the corresponding 5 weeks of last year was 855, showing a decrease of 35.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Feb. 2nd, was 165. The number in the corresponding week of last year was 156, showing an increase of 9. The total number filed during the 5 weeks of the present year is 707; the total number filed in the corresponding 5 weeks of last year was 766, showing a decrease of 59.

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### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Feb. 2nd, amounted to £1,132,670, by way of addition to £1,849,506, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,796,791, showing a decrease of £664,121. The total amount registered during the 5 weeks of the present year was £6,535,064 (in addition to the issues in previous years by the same companies), as compared with £8,990,063 for the corresponding 5 weeks in 1905, showing a decrease of £2,454,999.

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### The Profession in Scotland.

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#### Personal.

The firm of Steele & Henderson, Chartered Accountants, 105 West George Street, Glasgow, of which Henry Moncrieff Steele and James Arthur Fraser Henderson were sole partners, has been dissolved. Mr. Steele will collect

all debts due to the firm, and will discharge all its liabilities.

Mr. J. W. Stewart, Chartered Accountant, 150 Hope Street, Glasgow, has assumed as a partner Mr. Peter Stewart White, who has been a member of the Institute of Accountants and Actuaries in Glasgow since 1896. The co-partnership will be conducted under the name of J. W. Stewart & Co.

Mr. Thomas Brodie, C.A., and Mr. Andrew C. McMorland, C.A., have begun business at 156 St. Vincent Street, Glasgow, under the firm-name of Brodie & McMorland.

#### **Institute of Accountants and Actuaries in Glasgow.**

The annual general meeting of the Institute of Accountants and Actuaries in Glasgow, incorporated by Royal Charter, was held on the 30th ult., in the Hall, 218 St. Vincent Street, Mr. Thomas Jackson, the retiring President, in the chair.

The report and accounts were unanimously adopted.

Mr. John Mann, Senr., the only surviving original member of the Institute, was elected President in room of Mr. Jackson, whose term of office expires, and the following were elected members of Council in room of those retiring by rotation, viz.:—Messrs. Thomas Jackson, Robert Carswell, Robert M. Maclay, and Alexander D. Deas. The remaining members of the Council were re-elected.

The Council for the year is as follows:—President, Mr. John Mann, Senr.; Members of Committee, Messrs. Robert Reid, R. C. Mackenzie, Dugald Bannatyne, David Strathie, Matthew Mitchell, Peter Rintoul, J. Herbert Wilson, A. Herbert Brown, Thomas Jackson, Robert Carswell, Robert M. Maclay, and Alexander D. Deas; Auditor, Mr. John Wilson; Treasurer, Mr. T. A. Craig; Secretary, Mr. Alexander Sloan.

The following were elected representatives, along with the President *ex officio*, to the General Examining Board of the Chartered Accountants of Scotland, viz.:—Messrs. Ninian Glen, M.A., F.F.A., Joseph Patrick, M.A., Alexander Moore, Junr., John Mann, Junr., M.A., and Alexander Sloan.

The following were elected to represent the Institute on the Joint Committee of the English, Scottish, and Irish Chartered bodies, viz.:—Messrs. Thomas Jackson, John Annan, and Alexander Sloan.

The following having passed all the examinations prescribed by the rules and been found duly qualified were, on the recommendation of the Council, admitted as members, viz.:—James Marshall Findlay, Glasgow;

Norman James Kerr, Glasgow; William Cowan King, Glasgow; Thomas Arthur Martin, Glasgow; George Morton, Junr., Glasgow; Henry Cooke M'Allister, Glasgow; William Rogers Simpson, Glasgow; Robert Stewart, Junr., London; Norwood A. R. Watson, Calcutta.

#### **The Accountant of Court's Report.**

There has been issued the report by the Accountant of Court to the Lord President, the Lord Justice-Clerk, and the other Judges of the Court of Session, on the state of judicial factories, sequestrations, and cessios falling under his supervision, in compliance with the 18th Section of the Judicial Factors (Scotland) Act, 1849, and the 160th Section of the Bankruptcy (Scotland) Act, 1856, from 31st December 1903 to 31st December 1904. It states that during the year there were lodged in his office 65 bank consignment receipts for sums amounting in all to £52,401 6s. 2d.; 83 bonds under the Judicial Factors (Scotland) Act, 1849; 10 bonds under the Bankruptcy Act, 1856 (Section 164); 136 bonds under the Judicial Factors (Scotland) Act, 1880; 60 bonds under the Judicial Factors (Scotland) Act, 1889; and 17 other cautionary bonds. Of the 306 bonds lodged, 63 were by guarantee companies. There were also seven inventories of estates under the Guardianship of Infants Act, 1886, and five applications by testamentary trustees for supervision of their accounts under order of the Court. During the year the Accountant had before him, under remit from the Court, 237 applications for discharge of judicial factors, and six special remits, and he reported on 130 applications for special powers. The number of Factory Accounts audited and reported on was 2,110. The value of the movable property under the Accountant's supervision amounts to £6,358,596, and the heritage at an average of, say, 22½ years' purchase, £3,591,607—in all, £9,950,203. There are 19 testamentary estates supervised by the Accountant, and the funds exceed £1,930,000. At 31st December 1904 there were 106 consignment receipts in the Accountant's custody, amounting in all to £6,191 12s. 8d. In terms of the Court of Session Consignation Act, 1895, there have been handed over to the King's Remembrancer during the year consignment receipts for sums amounting to £5,949 14s. 2d., making the total amount paid to Exchequer (including the balance of funds in hand in 1889) £45,859 16s. 11d. He has further to report that there were 317 sequestrations awarded during 1904, and three reopened, while 296 were wound up, and that the number in dependence at 31st December 1904 was 3,942. In the sequestrations wound up during the year the gross receipts amounted to £237,424, and the debts to £692,772. The Accountant concurred in 16 sales

of heritable property by private bargain, and made 60 special reports on applications for discharge. Discharges were granted to 257 trustees and 112 bankrupts. The amount of consignations in bankruptcy cases in the Accountant's custody at 31st December 1904 was £5,614 15s. 5d. There was consigned during the year £564 os. 11d., uplifted £151 7s. 3d., and handed over to the King's and Lord Treasurer's Remembrancer £327 13s. 3d. (making the total amount paid to Exchequer £5,718 18s. 11d.). The number of cessios reported to the Accountant during 1904 has been 156. In the 72 cessios wound up by division of funds during the year the gross receipts amounted to £9,583, and the debts to £28,742. The Accountant granted 114 certificates of discharge, and made 15 special reports.

## COURT OF SESSION.

### Edinburgh—Outer House.

(Before Lord SALVESEN.)

January 31.

**T. Neilson v. D. Alexander.**

*An Accountant Sued for Breach of Contract.*

Proof was led in an action at the instance of Thomas Neilson, writer in Glasgow, against Daniel Alexander, accountant and auditor, property agent and valuator, 82 West Nile Street, Glasgow, in which the pursuer asked an order on the defender to implement and fulfil his part of a minute of agreement of sale dated 7th and 8th August last, by accepting a valid disposition executed by the pursuer in his favour of certain subjects at Gorbals Cross at the price of £11,750, and in the event of the defender's failure to implement his part the pursuer concluded for payment of £1,500 as damages. The defender pleaded that the pursuer had sustained no loss in consequence of his failure to implement the contract of sale, and that in any event the sum concluded for in name of damages was excessive. He offered the pursuer £50 in name of damages, with £8 8s. in full of expenses.

Lord Salvesen gave decree for £650 as damages for the defender's failure to implement the contract, and found him liable in expenses.

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## Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
„ 21st „ .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th „ .. .. .	3%
„ 28th „ .. .. .	4%

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## Leading Articles.

### The Appointment of Auditors.

IN the *Sheffield Daily Telegraph* of the 5th inst., under the heading "Audits of Public Accounts," appeared a letter signed "Old Accountant," which raises a question of considerable interest to our readers, not merely in connection with the audit of those accounts which are generally described as "public," but also with regard to all audits, save perhaps those performed on behalf of private firms and individuals.

Shortly stated, the writer's submission is that a change of auditors should take place yearly, and that no auditor should be appointed two years consecutively; and, in his opinion, this applies as much to the audit of public companies as to that of corporations and charitable and other public institutions. It is suggested that most thoughtful and experienced people

will see the desirability of such a change ; and without attempting to exhaustively state its advantages it is claimed *inter alia* that there would be less possibility of collusion and neglect, and that improved ideas as to the mode of keeping and rendering accounts would be the result.

The suggestion strikes us as being a more revolutionary one than is likely to emanate from a qualified accountant of mature experience, but, at the same time, it is obvious that were such a practice to become general, it would at least be possessed of certain advantages. That being so, it is perhaps worth while to consider shortly what advantages may be expected, and what corresponding disadvantages may be foreseen.

The advantages—such as they are—have, we believe, already been exhaustively stated ; that is to say, although “ Old Accountant ” pleads that want of space forbids the setting forth of reasons for this change, he has yet mentioned every possible advantage that could in reason be expected to accrue therefrom—namely, (1) practical immunity from collusion ; (2) practical immunity from neglect ; and (3) the benefit of a continuous succession of new ideas on account-keeping. Taking these three points *seriatim*, the first may, we venture to think, be dismissed as outside the region of serious discussion. It is of the essence of a professional audit that the auditor should have nothing whatever to do with the management of the business or its finances, and, therefore, be incapable of misappropriating assets, even if so inclined. A dishonest auditor might, of course, act in collusion with a dishonest employee. That is to say, in consideration of neglecting to report discovered frauds he might participate in the proceeds of such frauds ; but there is no recorded

case of such collusion ever having existed between auditor and audited, and so long as anything approaching reasonable precautions be taken to employ only auditors of repute, the idea is, as we have already said, too fantastic to be seriously entertained. Only once, in *In re Dumbell's Banking Company, Lim.*, have the auditors of a company been convicted of fraud in connection with their professional work ; and even here the composition of the tribunal by which they were convicted was not beyond criticism. It was clear, moreover, that the only possible advantages derived by them from allowing the existing state of affairs to go on were the continuance of an audit which produced only a very moderate fee, and the continuance undisturbed of certain overdrafts in which they were more or less directly interested.

On the subject of immunity from neglect, there is undoubtedly much more to be said in favour of the idea. There is, of course, a risk that the most vigilant sentinel may sleep at his post if continued there too long, and in the case of an auditor there may be possibly the risk—be it great or small—that the work in course of time may get mechanical, and, therefore, unintelligent and ineffective. After a certain age, moreover, intellectual attainments tend to decline to an extent that is not counterbalanced by ripening experience ; and so, upon purely theoretical grounds, a change of *personnel* might be found advantageous, upon the “ new broom ” principle.

With regard to the advantage to be derived from a succession of new ideas upon the latest developments in account-keeping, it may well be questioned whether anyone upon whom devolved the charge of a set of books would be willing to re-organise his system of accounting every year to meet the requirements of a new

firm of auditors. In practice the result would probably be all the other way. The idea would become crystallised that, of course, each new auditor wanted something different, and that on no account must it be conceded to him, or else everything would be turned topsy-turvy annually, as a matter of course. It may be pointed out that in order to obtain the benefit of the latest improvements in accounting it is not necessary—or, for that matter, even desirable—that a new auditor should be employed every year. On the contrary, what is needed is rather that auditors somewhat above the average of intelligence and energy should be employed, and that they should be invited to make suggestions upon the matter—which is, of course, strictly speaking, quite outside the scope of their duties as auditors. Even in this day the supply of such practitioners is not absolutely inexhaustible; and thus the system of continually superseding an auditor, no matter how able he might show himself to be, at the end of a year—*i.e.*, long before he would have had time to effectively impress his own individuality upon the work—would tend directly to defeat the end which it aimed at attaining.

So much for the alleged advantages of the suggestion. Now let us consider its defects—which are, of course, the defects of its qualities. We need say nothing here on the subject of possible collusion, for we have already dismissed it as a risk too remote for serious consideration when reasonable care is taken with the selection. With regard to the risk of possible neglect, it may be pointed out that negligence—using the term in its ordinary sense—is by no means the only conceivable cause of indifferent work. The most fruitful cause is either incompetence or lack of experience, but apart from that it is unreasonable to expect any

human being, no matter how gifted, to act to the best advantage under wholly unfamiliar circumstances. In the case of large audits there can be little doubt that it is practicable for the auditor to put in better work after the first year—and even perhaps after the second year as well—on account of his increased familiarity with all the circumstances obtaining. Even if it be granted for the sake of argument that there is a tendency for work to be slackly performed by those who are, or think they are, thoroughly familiar with it, this risk would certainly not accrue at the end of the first year.

We have already alluded to the probable result of a new auditor being appointed annually, such new auditor being invited to introduce all his own latest ideas in the hope that thereby a good system of accounting may be eventually built up. We have no hesitation in saying that no accountant of experience would seriously put this forward as a proper means of ultimately arriving at a good workable system. Those who have studied the matter know that in the case of large undertakings it is often extremely difficult to introduce improvements, the desirability of which is admitted, on account of the fact that the task somewhat resembles that of substituting one card for another in a house built of cards. A safeguard light-heartedly introduced at one point may, and often does, leave two or three other points unguarded which were formerly well protected. While, therefore, of course, not seeking to discourage the gradual and intelligent improvement of systems of accounting, and of internal check, we may point out that this process is not likely to be most successfully achieved in practice by employing those who have no familiarity with the existing system.



But although it may be seen from what we have stated that we are quite opposed to the views expressed by the correspondent of our Sheffield contemporary, we are prepared to concede that there is something in his suggestion, provided the suggested period of office for each successive auditor be reasonably increased. In that event, however, the suggestion no longer remains novel, and is not revolutionary. The Manchester Corporation has for some time been in the habit of appointing its professional auditors for a term of years (we believe five years), and at the expiration of that time they are not immediately eligible for reappointment. The same system might, we consider, with the greatest possible advantage be extended to all undertakings—with the limitation, of course, that private persons must naturally be left free to do as they think best. At the same time, we would make the original appointment a quinquennial rather than an annual one, so that during his term of office the auditor should be in every respect independent and inaccessible to any form of pressure on the part of directors and others. The mere fact that he must in any event vacate office at the end of his prescribed term would, of course, in such cases add to his independence, if, indeed, there were any doubt about the matter. In the course of a reasonable period, such as five years, the auditor would have every opportunity of really getting to the bottom of the system in force in all its various ramifications, and, in the case of the larger audits, would have an opportunity of varying his work from year to year, thus securing the maximum amount of efficiency without unreasonable expense or delay. On the other hand it is not to be expected that any such innovation will become popular with professional accountants,

inasmuch as it undermines the stability of that which the majority look upon as the very backbone of their connection. Still, if the idea is a good one intrinsically, it is well worthy of careful consideration, and it might at least be adopted experimentally in connection with the audit of local authorities' accounts, if and when it is ever decided that these important public accounts shall for the future be audited by competent persons.

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### Some Recent Bankruptcy Decisions.

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IN the course of the past few days some decisions of very considerable interest to bankruptcy practitioners have been given in the High Court. On the 5th inst. the Divisional Court decided in *In re a Debtor; ex parte the Debtor*, that where a petitioning creditor had endeavoured, after the service of the petition, to secure a settlement of his claim upon terms which within his knowledge the debtor could not possibly offer to each one of his creditors, the Registrar ought to take the petitioning creditor's conduct into consideration before making the receiving order. The report at present before us is too short to enable us with safety to draw any general deductions from this decision. It would certainly appear, however, to go in the direction of extending the existing precedents, which seem to show that the Courts now only with the greatest reluctance make receiving orders where the petitioning creditor has shown that all he is anxious for is to obtain payment of the debt due to him, whatever may happen to the general body of the creditors. This point of view is intelligible, and—but for the admitted abuses of the Deeds of Arrangement Act, 1887—would appear to

be highly desirable; but if it is really thought best that a majority of creditors should have the power to keep an estate out of bankruptcy, it would be well that a law should be passed to that effect, rather than that they should be dependent for this benefit upon the purely accidental circumstance that some dissentient creditor has endeavoured to secure an advantage behind their backs.

In *re Dunkley & Sons* it was decided that where a creditor acting in good faith has had assigned to him a sum of money due to the bankrupt, there is nothing to deprive him of the protection afforded by Section 49 of the Bankruptcy Act, 1883, even although the assignment was made after the presentation of the petition but before the date of the receiving order. In this decision, of course, everything depends upon the good faith of the assignee. Where an assignment or payment has been made in bad faith it is, said VAUGHAN WILLIAMS, J., "a common law fraud to make a payment contrary to the bankruptcy laws, and I do not intend to give the benefit of the protecting section to any such transaction. I hold that the money was the property of the trustee at the time when the bankrupt paid it away, and the case does not come within the protecting section." The difficulty in the way of unqualifiedly accepting the decision in *re Dunkley* is that in connection with fraudulent preferences the test is not so much the *bona fides* of the creditor receiving the payment, as of the intention of the bankrupt making it. If the intention of the bankrupt was to prefer the creditor to whom the payment has been made, it becomes a fraudulent preference, even although that creditor may have been ignorant of the exact financial position of his debtor.

Another decision given by the Divisional Court on the 5th inst., *In re H. R. Jones*, was noted in our Current Law column last week. This decision has, it seems to us, a direct bearing on the discussion which appeared in these columns a short time since as to the respective rights of the trustee and the committee of inspection to nominate the solicitors to be employed to represent the trustee at an inquiry into the *bona fides* of a proof that had been lodged. In *Jones's* case certain proofs which were admitted for voting purposes, and not then challenged, were afterwards disputed by the petitioning creditors, and in the event of their objection being upheld the trustee appointed at that meeting would, it appears, have been nominated by a minority of creditors. Under these circumstances the petitioning creditors moved that the proofs be expunged and a new first meeting called. The respondent creditors objected that the motion was premature, as the right of a creditor to move the Court in such cases only arose after the trustee had dealt with the proof, or in the event of his failing or omitting to do so. The County Court Judge upheld the objection and dismissed the motion, with costs; but in the circumstances the Divisional Court decided that the Judge ought to have heard the case on its merits, and ordered that it be remitted back for that purpose. As, however, the case had in the meantime been transferred to the High Court, the resumed hearing in the Court below will not come before the County Court Judge, but before the Judge in bankruptcy.

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#### The East Ham Audit.

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IT may be remembered that last August Mr. BOGGIS ROLFE, the District Auditor of the East Ham Council, issued a report

which contained some severe reflections upon the manner in which the Council's accounts had been kept for the year 1903-4, and reference was made *inter alia* to a Secret Trust Fund which, we understand, it was alleged had been kept back from the auditor.

In consequence of this report the Borough Council appointed a Committee of Inquiry consisting of nine members. We are informed that the publication of the findings of this Committee has been delayed by the Christmas recess, followed closely by general election activities. We cannot help thinking, however, that in view of the importance of the matters at issue, the Committee would have done well to complete its inquiry and publish its report well before the Christmas holidays began. We are told that its report, when published, will not support the serious allegations made or opinions expressed by the auditor, but under these circumstances some very good explanation ought to be forthcoming—a better one than has yet reached us—for allowing the District Auditor's report to remain uncontradicted for upwards of six months. The *Stratford Express*, which commented upon the matter at the time, has since withdrawn all its charges or suggestions, and has apologised to the late Treasurer and Accountant for any annoyance, trouble, or loss that he may have sustained in consequence of its remarks. These remarks were, however, if our memory serves us, based upon the assumption that the report of the District Auditor was accurate, and, so far as we are aware of, nothing that the East Ham Borough Council has yet done has been sufficient to make such an assumption unreasonable. Doubtless our contemporary has in the interval been provided with the means of

satisfying itself that its previous strictures were unjustified, or it would not now withdraw them, but from the point of view of the public press it is certainly highly unsatisfactory that it should be unsafe to comment in the ordinary course, and without malice, on matters of public interest, upon the assumption that the statements contained in the public report of a Government official are accurate.

For our own part, we adopted what the event has proved to have been the wiser course of awaiting further information before dealing with the matter at all. We may point out, however, that that further information is long since overdue, and that if the East Ham Borough Council does not wish the case against it to go by default, it behoves it to see that the Committee of Inquiry appointed last September publishes its findings without further delay. It is, of course, quite conceivable that the Council is indifferent to public opinion—such a frame of mind is not altogether uncommon in the case of local authorities; but while the Councillors can no doubt be left to look after their reputations in their own way, they ought at least to take adequate steps to protect the reputations of their officials. Mr. ALFRED PLANT, who was the Treasurer and Accountant of the East Ham Council during the period under review, relinquished that appointment, it may be remembered, to take up an important post under the Great Western Railway Company when that company decided to throw open some of its senior positions to men whose experience of accounts had been obtained outside railway circles. In fairness to Mr. PLANT it is certainly imperative that the Committee's report should now be issued forthwith.

## Weekly Notes.

**A Point for Receivers.** The decision of Mr. Justice Warrington in *In re the British Power Traction and Lighting Company, Lim.; Halifax Joint-Stock Banking Company, Lim. v. The Company*, should be carefully noted by those to whose lot it falls on occasion to act as receiver and manager in an ordinary debenture-holders' action. The right of the receiver and manager to be indemnified out of the assets of the company against all expenses and liabilities arising out of the proper carrying on of the business, is well settled, and in the application of the principle involved liabilities *bond fide* incurred in the ordinary conduct of the business will, *prima facie*, be treated as having been properly incurred. The particular question in the case under review was as to whether there was any limitation (and, if so, what) on the general right of indemnity by reason of the fact that the Court had authorised the receiver and manager to borrow a limited sum of money on mortgage of the company's assets for the general purposes of its business. It now appears that if expenses and liabilities are incurred beyond the limit of borrowing power fixed by the Court, it will no longer be sufficient for the receiver and manager to show that they were incurred *bond fide* and in the ordinary course of business. He must be prepared to prove that, having regard to all the circumstances, he was justified in incurring the expenses and liabilities *without first obtaining leave*. Will examination candidates also please note the point?

**Bedstead Trade Combination.** It is reported that a new combine in the bedstead trade, embracing 32 firms in Birmingham, Manchester, London, and other parts of the country, has been successfully formed. The conditions of membership are said to be more elastic than those of the old metal trades alliance, which involved a rather complicated arrangement with the operatives. We suppose the venture will have success for a time, but we cannot see any justification for the belief that it will last very long.

**Municipalities as Common Carriers.** Those among our readers who are at all interested in municipal matters will do well to note that Mr. Justice Farwell, in the recent action brought against the Corporation of Manchester by Messrs. Sutton & Co., the well-known carriers, held that the Corporation had no statutory

power to carry goods *apart from its tramway system*, and that while as a chartered Corporation it had such power it was not entitled to expend any part of the funds referred to (city fund or tramway receipts) for the purpose of establishing, maintaining, or carrying on the business of carriers, *except as part of and in connection with its tramway undertaking*. The critics are, doubtless, waiting to learn whether there will be any appeal from the decision in the Chancery Division, but when the matter is discussed we hope that the points underlying our italics will not be overlooked. Quite irrespective of the merits of the matter, it is of interest to note that when the directors of a company cause that company to engage in a business that is *ultra vires* its constitution, they become personally liable to pay all costs and expenses incurred in connection with such illegal business, whereas members of a town or city council so acting appear to incur no responsibility whatever, and are even in a position to charge the cost of the proceedings against the rates.

**The Privilege of Limited Liability in Russia.** It is reported that by an Imperial decree recently made, amending the laws relating to commercial undertakings and public companies in Russia, the following new taxes will come into operation:—

Undertakings required by law to publish periodical reports of their transactions will, in future, pay a tax of from 3 to 14 per cent. of their net profits when the latter exceed 3 per cent. of the share capital, and varies between that figure and 20 per cent. This is in addition to the trade capital tax, which will remain in force. A further 10 per cent. tax is imposed on the net receipts (!) when they amount to more than 20 per cent. of the share capital.

Directors of undertakings which are obliged to publish periodical reports are required to pay a tax of from 1 to 7 per cent. of any salary or bonus received by them. The maximum rate only applies to salaries amounting to at least 20,000 roubles per annum.

**Grounds for Winding-up a Company.** On the 6th inst. Mr. Justice Warrington made an order for the compulsory winding-up of a company under somewhat unusual circumstances. Our readers are, of course, familiar with the fact that the Court will grant such orders *inter alia* "when it is just and equitable that the company should be wound up" (Companies

Act, 1862, Section 79 (5)). This is, of course, a very wide power, and has been used in the past under very varying circumstances, but in the case to which we refer the desired order was made under this subsection because in his Lordship's opinion there was sufficient *prima facie* evidence—he did not say more than that—that the company was promoted and carried on solely for the purpose of extracting money from the public and handing it over to the promoting company, and that there never was any *bond fide* intention that the company should do any real business. Under the whole of the circumstances he thought it would be a perfect scandal if he were to refuse a compulsory winding-up order, which was accordingly made. It may be added that the petitioner in this case was a holder of ten debentures of £10 each, and he was supported by fifty-one other debenture-holders holding in all approximately half the total debenture issue. There was no opposition to the petition save on the part of the company.

**The Capitalisation of Profits.** At a recent extraordinary general meeting of H. R. Baines & Co., Lim., it was decided, says *The Financial News*, to introduce a Bill into Parliament intituled, "A Bill to confirm the 'capitalisation in past years of certain profits of H. R. 'Baines & Co., Lim., and for other purposes.'" Messrs. H. R. Baines & Co., Lim., are the proprietors of *The Graphic*. Can any of our readers aid us in discovering a parallel case?

**Strange Position of a Debenture-holder.** The case of *Warner v. Cooper, Cooper & Co., Lim.*, which came before Mr. Justice Sutton on the 5th inst., raised a somewhat unusual question as to the rights of debenture-holders. It is, of course, well known that a company issuing debentures can impose its own terms, which accordingly become binding on successive holders thereof, but the general impression is probably that under all circumstances the company is liable to pay interest on such debentures to the then holders thereof at the current rate of interest. In the case just referred to the plaintiff sought to recover interest on £2,234 of B Mortgage Debenture Stock in the defendant company for one year, the amount being £89 odd. He failed, however, to prove a contract to pay this interest to him. It appeared that the debenture trust deed provided for the due payment of interest by the company to the trustees, but established

no contract to pay interest to individual holders of stock. The action therefore failed, and was dismissed with costs. The question was not mentioned, but we imagine there would be no legal difficulty in the way of a trust deed expressly providing that holders of stock had no right of action against the trustees under any circumstances, and if that be so, the rights of such stockholders would be restricted indeed, inasmuch as they would appear to be entirely dependent upon the goodwill of the trustees for anything whatever.

**Wranglers on the Bench.** With the elevation to the Bench of Mr. J. Fletcher Moulton, the number of Senior Wranglers at present occupying judicial positions has been increased to three, the other two being Lord Justice Romer and Lord Justice Stirling. All three graduated in the same decade. For a parallel case it is necessary, says *The Law Journal*, to go back to the early days of last century, when Chief Baron Pollock, Lord Langdale, M.R., Baron Alderson, and Mr. Justice Maule, all contemporaries on the Bench, were Senior Wranglers in 1806, 1808, 1809, and 1810 respectively. It is interesting to note that, of the present High Court Judges, in addition to the three already named, the Lord Chief Justice, and Justices Buckley, Channell, Joyce, and Bray were all Wranglers, thus refuting the common impression that a man who achieves high mathematical honours at his University achieves nothing else.

**Colliery Short-Workings.** With regard to the further question raised by our correspondent "Tonnage Rent" at the conclusion of his letter which appeared last week, the position of a company taking over an existing lease and the benefit to work off short-workings then existing is, it seems to us, governed by the decision of the late Mr. Justice Byrne in the case of *Foster v. The New Trinidad Lake Asphalt Company, Lim.* (*Accountant Law Reports*, XXVI., p. 209).

**The Roll of Notaries.** The application *In re a Notary Public; ex parte The Provincial Society of Notaries Public*, which was heard before Sir Lewis Dibdin, as Master of the Faculties in the Upper House of Convocation, at Church House, Westminster, on the 5th inst., raised a question of much historical interest. It appeared that the Divisional Court had removed from the Roll of Solicitors the name of one who had been

found guilty of professional misconduct. The solicitor so removed was also a Notary Public, and the object of the present application was to secure his removal from the Roll of Notaries. It was stated that up to the time of Henry VIII. jurisdiction in the matter was with the See of Rome, but that by an Act passed in that reign the jurisdiction was transferred to the Archbishop of Canterbury. Since such transference it was admitted that there was no recorded case of a notary having been removed from the rolls, but it was contended that in spite of this absence of precedent the Court's jurisdiction was clear. The Master of the Faculties held that he had jurisdiction to deal with the case, and made the order asked for. The case is perhaps the more interesting, inasmuch as there was no allegation against the conduct of the respondent in his capacity as a notary, and it would thus appear that he has been punished on two separate and distinct occasions for the same offence.

#### Foreign Currencies and Branch Accounts.

The method of dealing with foreign currencies in the incorporation of Branch results in Head office books, mentioned by our correspondent "C. H. B." in his letter which appeared in these columns last week, is quite inaccurate, and would, in the event of fluctuations being at all considerable, produce quite misleading results. The correct treatment would take too long to describe in the space at present available, but our correspondent will find it fully explained in Dicksee's "Advanced Accounting."

#### A Curious Compensation Case.

The case of *Denman & Cording v. The Mayor, Aldermen, and Councillors of the City of Westminster*, which came before the Courts on the 7th inst., disclosed a remarkable state of affairs. The plaintiffs sought an injunction restraining the defendants from proceeding to treat for the acquisition of their business premises, or at least for such portion of such premises as were not required for the purposes of the London County Council's scheme to widen Piccadilly. It was stated that as the London Council had no statutory powers of purchase, the Westminster Council had arranged to treat for the acquisition of these premises on their behalf. The plaintiffs said they were willing to treat for the 27 feet actually required for the improvement scheme, but claimed that the defendants had no right to dispossess them of the remainder, which would be sufficient for their business. They alleged that such remainder was

not required for the purposes of the scheme, but if taken from them would be sold to a company which had offered the Council a large price for the land. His Lordship expressed surprise that a local authority should use its statutory powers in the interests of persons desiring to acquire adjacent land from its owners, and stated that the authority had no right to reduce the burdens of the ratepayers by straining its powers to enter into such a bargain. He found no evidence that the defendant Council had exercised an independent judgment in the matter, and held that its adjudication was not binding upon the plaintiffs; that the local authority was not entitled to more of the premises than was actually required for the widening of Piccadilly, and that the remainder should be left as a "house" if the plaintiffs desired to remain in possession, in which case they could not be dispossessed in favour of others. He accordingly granted the injunction asked for, with costs. This case is of interest not merely as providing an instance of excessive zeal on the part of a local authority in the interests of ratepayers which is as unusual as it is remarkable, but also because it shows that if property-owners so desire they are entitled to retain possession of that portion of their property not actually required for the purposes of the scheme on hand.

#### Income-Tax.

In reply to the question raised by our correspondent "Justice," last week, we may point out in the first instance that the pseudonym adopted suggests that our correspondent is approaching the subject from a mistaken point of view. The question at issue is not what is the justice of the matter, but what is the law. Unless our correspondent can prove to the satisfaction of the Commissioners that the profits have fallen short from some specific cause since the death of John Brown, Senr. (Income-Tax Act, 1842, Section 100), the business must be treated as a continuing business, and the assessment should be based on the profits for the three years ending 31st December 1904, John Brown, Junr.'s salary being added to such profits unless a new manager has been appointed in his place. Under Section 133, however, Brown is entitled to relief to the extent by which the average for the three years 1903-5 is less than the average for the three years 1902-4. The amount upon which he is liable to taxation is thus £440. We may add that in the absence of some "specific cause" we do not see what he has to complain of.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### The Competition between Accountants.

*(To the Editor of The Accountant.)*

SIR,—It having come to my knowledge that some of the remarks made by me at the Liverpool Chartered Accountant's Dinner, in November last, have been so thoroughly misunderstood as to give them a meaning which it was never intended they should have, I desire to withdraw absolutely from my remarks on that occasion any reference whatever to the Chartered bodies of Scotland and Ireland and other Societies, save and except those referring to competition, as to which I maintain my personal views.

Yours faithfully,

London, 12th February 1906.

WM. B. PEAT.

### Municipal Trading Accounts and Audit.

*To the Editor of The Accountant.*

SIR,—At a time when municipal accounts and their audit are being discussed, it may be of interest to show what an active ratepayers' association can accomplish if its members are in earnest.

In the autumn of 1904 a series of articles appeared in two Ealing papers written by the then Chairman of the Housing Committee, recommending the Workmen's Dwellings scheme and advocating borrowing a large sum of money to enlarge it. On carefully examining the accounts it was discovered that this venture with the ratepayers' money was carried on at a loss. One item in them puzzled us exceedingly, it was "loans *paid off* out of revenue £1,163 7s." On taking out the Revenue Account from the start it was found that after debiting mortgage interest and other charges there

was a loss of £209 13s. 6d. Instead, therefore, of £1,163 7s. being "*paid off* out of revenue," it was found that it was met by means of a "bank overdraft on General Account £1,337 18s. 7d." In the accounts recently published this method of stating them has been altered.

The next point carefully examined was the provisions of the Municipal Corporation Act, 1882, as to auditing. Here it was found that no test of competency was required. The Mayor's auditor must be a councillor, and elective auditors must be qualified to be such. In Ealing the Mayor's auditor for some years past has been the Chairman of the Finance Committee. He is the Mayor this year, and his auditor is the Deputy-Mayor. Here the question in its broadest sense may be raised, whether members of a Finance Committee of a borough should be eligible to act as auditors of the accounts and the expenditure they recommend the council to adopt. I do not remember a case either of a chairman or a member of a board of directors acting as auditors of the company of which they had control, and I think that there should be a bye-law in every borough providing that members of the Finance Committee of a council should not be eligible to audit the accounts that they are in a measure responsible for. Of the present two elective auditors there is one, I understand, thoroughly competent, and the recent discussion in the local press has brought home to him his responsibilities, and the burgesses are much indebted to him for various matters to which he has called attention. The other elective auditor is the vestry clerk. In a letter published in the local press in December last written by his colleague to the Finance Committee of the Council is the following:—

"I prefer to forward this letter to you without referring to my colleague, he holding several *public appointments*, which are likely to bring him in contact with the officials concerned, and leave it to your judgment whether he *could exercise that independence which is necessary in exposing a defective supervision*, and, moreover, I have recently experienced that similar ideas and recommendations, which I am pleased to say have been adopted by you, as for instance, the introduction of the Stores Account, the guarantees of the officials' fidelity, the full control of cash by the Imprest system, and other matters were not credited to me, whereas they invariably and entirely have emanated from me and in every detail were the produce of my brains."

I think your readers will agree with me that there is much that requires alteration.

It would appear also from the letter from which I have quoted that the system adopted in the collection

of the rates at the municipal office is very, very lax. The elective auditor writes *inter alia* :—

"The system at present in vogue by giving consecutive receipts for district rates is certainly one which recommends itself as being simple and convenient, but, on the other hand, gives every facility for malpractice and presents the greatest difficulty of control by the Finance Committee and impossibility of a proper audit in respect of 'Income.' Although lists showing the amounts of empties and irrecoverables are laid before the Committee and produced to the auditors whenever I desire, it is impossible to verify their correctness, and with a collection of the district and poor rates amounting to over £120,000 annually (and continually increasing) and of which about  $4\frac{1}{2}$  per cent. or between £5,000 and £6,000 are irrecoverable, I cannot see how either the Committee or the auditors can check the amounts, and nothing is easier for an official to misappropriate large amounts, and write them off as irrecoverable. I must here say that I have implicit faith in your collectors and the officials in the accountants' and other departments, but the fact remains and it is only a matter of good fortune, that you possess trustworthy employees, and you must provide and protect yourselves from eventualities."

Imagine a rate collection of over £120,000 a year with no efficient check thereon! What a temptation is here offered to those who may be on the border line through betting, card playing, &c.

The elective auditor submits two remedies for this lamentable matter :—

"One of the remedies in preventing such defalcations would be to simply revert to the former method, and which is in force with the poor rate. The receipt books are made up thus :—Counterfoil, receipt, demand note. The demand note and corresponding receipts are filled in at the same time, the first is duly delivered and the receipt is given on payment and must correspond with the counterfoil, if 'irrecoverable' must be still in its proper place, and if missing, then the amount must have been paid, and if 'partly empty' the counterfoil would show by being altered, and thus it remains for effectual audit only the comparison of the remaining receipts in the book with the statements of empties, &c.

Another remedy, though less facilitating the audits but giving control to the treasurer's department without reverting to the old system, and certainly time and labour saving, is as follows :—

The demand notes for all rateable properties, being made out and corresponding with the rate books, are to be prepared by the treasurer (not as hitherto by the collectors) and handed to the collectors for delivery, those for unoccupied houses, and consequently not delivered, are endorsed and returned to the treasurer's office; should the properties become rateable through

intermediate occupation during the half-year, the old demand note relating to it is cancelled and a new proportionate one is issued. The rate books, which will be daily posted up by the treasurer from the receipt counterfoils, must at the end of the term correspond with the amounts collected, plus the non-delivered demand notes. This system has been adopted by many boroughs, and (which I strongly recommend) has the great advantage that, in addition to being convenient, defalcations can scarcely occur, unless the collectors are in collusion with the treasurer."

Perhaps some of your readers can suggest another remedy.

There is another matter also that is alarming the burgesses—viz., the numerous applications to borrow money. Last week £25,000 was wanted for electric light purposes. Here is an extract from a local paper :—

"A Councillor: I am myself a member of the Council and of the Committee, and I absolutely, until this last hour, knew nothing of this application, or whether it was for machinery, or for mains, or other things. I had no idea of it. I knew nothing about it, and not one member of the Electric Lighting Committee knows anything about the allocation of this money.

The Chairman of the Committee: I must entirely discredit that remark, sir. This matter has been before the Committee on several occasions, and the Committee has had all these details. Captain ———, as a member of the Committee, has had every opportunity of asking questions and obtaining information. The matter received very careful consideration before it was sent up to the Council.

The Councillor: I say this new machinery is not required, and the necessity for it was not discussed. That is my point, and that is all I have to say."

Sooner or later the small loans scheme will cost the ratepayers dearly. Over £87,000 was raised on debentures, with few exceptions, at six months' notice. What will occur if a panic arises throughout the country on this faulty system of raising money for capital permanent outlay?

In conclusion, through the efforts of the Ratepayers' Association, a clause was inserted in the local Act enabling the Council to employ Chartered Accountants. The year book just published also gives much more information than former ones.

Yours faithfully,

February 10th 1906.

F. C.

P.S.—I think *The Municipal Journal* will agree that something has to be done, at any rate in Ealing, to have a more efficient system inaugurated.—F. C.



**Gas Companies and Depreciation.***(To the Editor of The Accountant.)*

SIR,—Referring to your leading article in to-day's issue.

You point out that the provisions of the Gasworks Clauses Acts, 1871 and 1874, taken in conjunction with the circumstance that the statutory form of accounts is on the Double-Account System, indicate that it is the intention of the Legislature that no provision shall be made for depreciation, except by means of a "Reserve Fund" under Section 31 of the latter Act.

May I have your views upon two points in the case of undertakings *not* owned by local authorities?

- (1) Do you consider it to be illegal to provide for depreciation by charging a part of the current year's capital expenditure to revenue? For example, if £1,000 is spent on new mains, not in place of old ones, would it be very wicked to charge, say, £800 to capital and £200 to revenue?
- (2) Do you consider the auditor is under any obligation, legal or moral, to guard the interests of the consumer? He is appointed and paid by the shareholders of the company.

A small invested reserve is all that most companies require; unexpected contingencies, such as the blowing up of a gasometer, can be provided for by insurance.

There are many advantages in providing for depreciation as indicated in my first question. One of them is decidedly in favour of the consumer—viz., capital expenditure being kept down, there will be less to pay away in dividends to shareholders.

Yours faithfully,

A.C.A.

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10th February 1906.

**Pennies Coined for Tossing.***(To the Editor of The Accountant.)*

SIR,—Thinking it may possibly interest your numerous readers, after the strain of the recent elections, I enclose a cutting taken by me from the Birmingham papers when I was here in the summer and autumn of 1875, over thirty years ago.

I came across this cutting when sorting some old papers a few days ago before coming down here, and have shown it to several of my local friends and it amused them very much. I trust it may have a similar beneficial effect upon your readers.

**EXTRAORDINARY LETTER TO THE BIRMINGHAM MINT.**

The following peculiar letter, dated September 1st, has been received by Mr. Ralph Heaton, at the Mint, in Icknield Street East:—"To Messrs. Heaton & Sons.—I had a penny which had two heads upon it, and I have given it away in mistake. I would like another one, so if you will cast two for me, one with two heads and one with two tails. I have enclosed four stamps, and if it is not enough I will send a few more for your trouble. Let me know by return of post if you can supply me, and oblige, PETER REID, Bridge-of-Caley, Blairgowrie. N.B.—It is for tossing with I want them, and I will pay the postage of them."

The letter was forwarded to the Mint in London, with the following note:—"The Mint, Birmingham, Sept. 3 1875.—To the Honourable Freemantle, Deputy-Master of the Mint.—Dear Sir—The note enclosed, with 8½d. stamps, arrived here yesterday. As I think the application so unique, and as we cannot oblige the applicant with his tossing pennies, I have taken the liberty of sending it to you, and remain, dear Sir, yours faithfully,  
RALPH HEATON."

I am, Sir, your obedient servant,

GÉRARD VAN DE LINDE.

Birmingham, 9th February 1906.

**Foreign Currencies and Branch Accounts.***(To the Editor of The Accountant.)*

SIR,—In reply to the letter signed "C. H. B." in your issue of the 10th inst., asking the reason for the practice of converting the balance of Profit and Loss of a Foreign Branch at the average rate of the period covered by the accounts, this practice assumes that the profit accrues over the period evenly day by day, and that in its character of profit it is not properly retainable abroad, these assumptions being the nearest approximation to fact.

Suppose the floating assets and liabilities of a Foreign Branch at the beginning of a given year to exactly balance each other, and exchange on that day to be 24 francs to the £, and suppose that precisely the same state of affairs existed at the close of business at the end of the year in question when exchange was again 24 francs.

Suppose that during the year a profit of 50,000 francs had been earned, assumed to accrue equally from day to day, and that exchange during the first and last quarters of the year was at 24 francs to the £, and during the second and third quarters of the year it was 26 francs to the £.

Suppose further that the proceeds of a sum of 50,000 francs, which is exactly equal to the profit of the whole period, had been remitted to England during the time when exchange was 26 francs to the £, then about £1,920 would be realised in England, and if the profit in francs earned in the year were converted at the end of the year, as suggested by "C. H. B.," at the rate of exchange then current, the company's accounts would show a profit of about £2,080 and a loss on exchange of £160, being the difference between the amount actually received and the profit so shown in the accounts; whereas the nearest approximation to fact is evidently to convert the profit at the average rate of exchange for the period, which is 25 francs, amounting to £2,000, and to show a loss on exchange of £80, this having in fact arisen owing to the whole of the sum of 50,000 francs having been remitted at a time when exchange was less favourable than the average of the period.

I have endeavoured to eliminate all factors in the above supposititious case which do not bear on the question raised as to the principle of converting Profit and Loss at the average rate of exchange, which is certainly the proper one. Any other method might seriously distort the results, especially if the accounts had to do with countries where violent fluctuations sometimes occur, as, for instance, the South American Republics.

Yours faithfully,

London, 12th February 1906. P. D. LEAKE.

#### The L.G.B. Accounts Committee.

(To the Editor of The Accountant.)

SIR,—I notice this morning in *The Accountant* dated February 10th a paragraph on the subject of the Local Government Board Accounts Committee, and in connection with that subject hand you copy of a resolution which has just been despatched by this Chamber to the President of the Local Government Board. I notice also that you ask who are the members of the Committee, and I append provisional list of the same, which it is possible may be added to further, viz. :—

Mr. Walter Runciman, M.P., Chairman.

- „ T. Pitts, C.B.
- „ J. Bromley, C.B.
- „ R. Barrow.
- „ E. P. Burd.
- „ J. J. Burnley.
- „ J. Gane, F.C.A.
- „ F. Merrifield; and
- „ G. R. Snowden, Secretary.

#### DEPARTMENTAL COMMITTEE ON ACCOUNTS OF LOCAL AUTHORITIES.

“Resolved :—That this Chamber, having regard to the composition of the Departmental Committee recently appointed by the President of the Local Government Board to inquire and report on the accounts of Local Authorities in England and Wales, is of opinion that, if it is desired that the report of such Committee shall command the confidence of the commercial community, representatives of some, or all, of the other societies—in addition to ‘The Institute of Chartered Accountants in England and Wales’—named in the recommendation contained in the Report of the Joint Select Committee on Municipal Trading, 1903, should be added to such Departmental Committee. The Chamber believes that the Committee would thus be greatly strengthened, and that the adoption of this course would be more in accordance with the before-mentioned Report of 1903.”

I am, yours faithfully,

THOMAS H. BARKER,

Liverpool, 10th February 1906. Secretary.

[Our correspondent cannot have read our pages very carefully or he would be aware of the fact that we have already published the names of the Committee. There is no mystery about the names; what we asked was who all the committeemen were, and what were their respective qualifications for the position.—*Ed. Acct.*]

#### Colliery Shortworkings.

(To the Editor of The Accountant.)

SIR,—Before dealing with the question set forth in the latter part of “Tonnage Rent’s” last letter, it may make for clearness, and perhaps the further interest of accountant students, to take a summary view of the “old principle” of accounting he has condemned, in comparison with his new policy and fallacious arguments thereon.

The old principle allows a colliery to show its minimum rent as an asset, considering such rent *not as being anything in the nature of land or warehouse rent*; but in reality as a *payment in advance to the lessor recoverable from future royalties*. That this procedure—as admirably expressed in “Royalty’s” letter in your issue of January 27th—is quite sound, cannot be gainsaid, for, as I have previously stated, the minimum rent tonnage is not fixed so high that it is in danger of being maintained.

The new policy, however, put forward by “Tonnage Rent” is to either write off the rent altogether or

create a reserve value for value with it. A cost taken out upon this principle would saddle one hundred tons of coal won in preliminary working with a full rent of £1,000, and five years afterwards charge *forty thousand tons with only the same amount*, if sufficient "shorts" remained to absorb all the overworkings of that year.

I will only emphasise, as answer to this, that in addition to an accountant satisfying himself that assets are brought *down* to their proper value, thus restraining profits from a division up to the hilt, it is equally incumbent upon him—in the interests of the shareholders on whose behalf he is engaged—to see that assets are kept *up* to a legitimate standard, and no undue charge thrust against current dividends. Therein lies a crucial point in his work. Any mere bookkeeper can dump payments wholesale to Profit and Loss. It certainly would be "sound financially."

With regard now to "Tonnage Rent's" question of a colliery purchased for £50,000. If no reference is made in the agreement of sale to the £5,000 of "shorts" standing—if they are "thrown in" afterwards, as his wording implies—would not the assets acquired be £55,000 value? Whatever the figures were, however, the Balance Sheet of the new company must show the £5,000 of "shorts" among its assets.

Supplementing the question with further working details we will assume that it has been satisfactorily established that the "shorts" are sound and require no reserve, also that an analysis of the account comes out as follows:—

Lease A for 99 years with Lord X. (6 years in operation, preliminary workings now finished):—		
Minimum Rent over the period at £1,000 per annum	£6,000	
Less Royalty charged to Working Account on tonnage won in 1902	£500	
Do. 1903	700	
Do. 1904	900	
Do. 1905	1,900	
	4,000	2,000
Balance of "Shorts" .. .. .		
Lease B for an indefinite period with Squire Z. (3 years in operation. Held in reserve for working 5 years hence):—		
Minimum Rent paid at £1,000 per annum	3,000	
	Total	£5,000

With these details before us the procedure at the end of the first year of the new company's working, upon a tonnage won from Mine A equalling, say, £2,600, would then be:—

1. Debit Working Account and Credit Lord X.:	
Royalty on Tonnage won	£2,600
2. Debit Lord X. from Cash Book Credit:	
With Minimum Payment made	1,000
3. Debit Lord X. and Credit Shortworkings:	
Overworkings taken in redemption of previous "shorts"	£1,600
In respect of Lease B upon area not in working:	
Debit Shortworkings with Minimum Payment made	£1,000

The position of the "Shorts" Account would now be:—

Lease A. Balance of "Shorts" to recover	£400
B. Full Minimum Payments to recover	4,000
	Total
	£4,400
Showing a net reduction over the year of	£600

The balance in time should be further reduced, and finally worked off *automatically in the same way*.

"Tonnage Rent's" contention that "shortworkings" carried forward cannot be collected from an outsider, "but only from the company itself out of its own profits earned in the future" is quite unsound. Surely, by wrongly debiting *the actual rent only* to Working Account—which in the instance under consideration would be £2,000—and then writing off the pseudo profit so obtained—which would, of course, be £600—against shortworkings, he is not labouring under the impression that they are being *redeemed out of profits*? The redemption should be direct from the lessor's *Personal Account as shown*.

If I may trespass upon further space I would beg to add that as a result of a verification not available at the time of writing my last letter, I find the higher ratio of workings to minimum rent quoted therein happens to refer to a *stone mining lease* which is fixed—I understand—upon rather favourable terms. This instance of such a high preponderance of workings over rent should not, therefore, have been used by me as a criterion for colliery workings.

I am, Sir, yours faithfully,

February 10th 1906.

DEAD RENT.

(To the Editor of The Accountant.)

SIR,—In reply to "Tonnage Rent" in your last issue, I assume that in this case there is no goodwill. The purchase price (£50,000) set out in the Deed of Conveyance must be credited to the vendors, and the various assets purchased should be debited under their proper heads. The £5,000, which appears to be thrown in for shortworkings, may, or may not, have an intrinsic value. In practice it is sometimes necessary to have recourse to leases where overpayments of rent have been made, and to carefully examine *all* the clauses. I have found many old leases badly drawn, and in one particular instance, in a Yorkshire lease, I found a governing clause in a lease contradicted and entirely upset by a subsequent clause introduced near the end of the lease.

It is not generally understood by those who have not had practical experience of Colliery Accounts and Leases that a colliery proprietor may be prepared, for the "general good" of his colliery, to pay a minimum rent for an area which he may never be able to work profitably, and, in fact, may never intend to work; but if there is a clause in the lease which says "the coal must be gotten in a workmanlike manner," then it must be worked, or the whole of the coal in that demise must be paid for.

An examination, and sometimes a cross-examination, is necessary of parties concerned in "shorts" before the amount to be written off can be ascertained.

Much more might be said under this head, but *verbum sat sapienti*.

Yours truly,

Newcastle-upon-Tyne.

JOHN BLENCH.

#### Income Tax.

(To the Editor of The Accountant.)

SIR,—The *nom de plume* taken by your correspondent "Justice" would, in my opinion, have been more appropriately "Injustice," in so far as he thereby covers a suggestion that John Brown, Junr., is receiving improper treatment at the hands of the Surveyor.

For if John Brown, Junr.'s assessment for 1905-6 was arrived at on an average of past profits *without omitting* from each of the years taken the salary he received as manager, such assessment would manifestly not furnish a true forecast of his income for the year mentioned, because, 'as present proprietor, he is entitled to the *whole* of the profits of each year, and an average arrived at as indicated would merely give the measure of the profits for assessment of his predecessor, and not of himself.

The logical, if not the strictly literal, position has, in cases such as this, always appeared to me to be as follows:—

The Inland Revenue has a right to collect income-tax on the income arising in this country from all investments of capital, and if any person sees fit to transfer any capital of which he may be possessed from one form of investment to another, such as, in the case under review, in the purchase of a business, then it becomes the affair of the Commissioners of Inland Revenue to follow that capital to its new investment, and assess the profits or share of profits which will now

represent the dividends, interests, &c., which were previously earned under the old investment.

Now, if John Brown, Junr., be assessed on the average, as shown by "Justice," to give an assessable result of £273, it is clear that the Inland Revenue will not receive tax on the full income which (hypothetically) John Brown, Junr., will receive, by reason of the transfer of his capital from one investment to another, for in the years prior to 1905-6 he will have paid tax (disregarding abatements) on income thus:—

Salary .. .. .	£200 to £250
Plus income arising on the principal sums which he invests ultimately in the purchase of the business .. .. .	

and now only an average of profits, with his former salary omitted from each year taken, will be a correct basis for estimating his income for the current year, assuming that the business is his sole source of income.

There is not, to my mind, any doubt but that the Surveyor would have been perfectly justified in demanding tax for 1905-6 on £490:—

Profit, 1902 .. .. .	£300
Salary .. .. .	200
	500
Profit, 1903 .. .. .	£280
Salary .. .. .	200
	480
Profit, 1904 .. .. .	£240
Salary .. .. .	250
	490
	3) £1,470
	£490

and in asking for tax on £440 only it is clear that the Surveyor has appreciated the merits of the case and has afforded the relief granted by Section 133, 5 & 6 Vict. c. 35, as amended, without putting John Brown, Junr., to the trouble of sending in a claim.

I am, Sir, your obedient servant,

HERBERT EDWARDS.

13th February 1906.

(To the Editor of The Accountant.)

SIR,—I have to thank Mr. T. Hallett Fry for calling attention, in your issue of the 20th ult., to my income-tax lecture at Sheffield, reported in *The Accountant* on the 6th ult., as he has thus enabled me to remove any misapprehension which may have arisen regarding my remarks about "double duty."

I expressed in that lecture my disapproval of proceedings for heavy penalties, except in clear cases of

fraudulent intention. Even in those instances "double duty" (that is, "single duty" over and above the ordinary duty) for three years seems a sufficiently heavy penalty, more especially if the statutory fine of £20 also is inflicted for each year.

I should regard the question of penalties for wilful offences entirely apart from unintentional errors and honest endeavours to make amends for them, if in the latter cases threats of proceedings did not constitute a powerful weapon, which may be used excessively in rectifying undercharges for past years.

When such undercharges are discovered, I am in favour of reasonable settlements being made between the Inland Revenue authorities and the taxpayer; and though it may be objected that the professional man or trader is fully conversant with his own affairs, and that subsequent rectifications of returns should not, in the bulk of cases, be necessary, I would suggest that if any new legislation gives the Crown power to recover undercharges under Schedule D for three years, equal power should be conferred on the taxpayer to recover overcharges under Schedule D for a like period.

The importance of this suggestion will be manifest to all who have adequate knowledge of how the public regard what is called "back duty."

Yours faithfully,

14th February 1906.

C. E. ISAACS.

### Conversion of Private Firm into Limited Company.

(To the Editor of The Accountant.)

SIR,—A. is the sole proprietor of a business. His position on 31st December last was as follows:—

Sundry Creditors ..	£5,000	Stock and Loose Plant	£8,000
A.'s Capital ..	10,000	Book Debts ..	7,000
	<u>£15,000</u>		<u>£15,000</u>

A. then converts his business into a company and takes 9,994 shares of £1 each himself, and his six sons take the other six shares.

1. Is it necessary, in order to comply with the Companies Acts, that there shall be a contract in writing whereby A. agrees to sell and the company to purchase the undertaking, or will not a mere verbal arrangement suffice?

If the latter, then the company pays him a cheque for £10,000 which he places to his credit at his bank, and thereout pays to the company his own cheque for

£9,994, and is allotted shares to that amount. The other six shares are also paid for.

2. Can such shares under such circumstances be regarded as having been subscribed for in cash?

If you can give me your opinion in your next issue I shall be grateful.

Yours faithfully,

PUZZLED.

[In the circumstances named the shares would be paid for in cash, but the assets could not be verbally assigned to the company.—ED. *Acct.*]

### Obituary.

#### John Martin Winter, F.C.A.

WE greatly regret to notice in the report of the Institute's Council meeting, which appeared in our last issue, the death of Mr. J. M. Winter, F.C.A., chief partner in the firm of J. M. Winter & Sons, Chartered Accountants, 16 Market Street, Newcastle-on-Tyne, which took place in January last, from an attack of pneumonia, at the age of 65. Deceased was one of the most widely respected accountants in the North of England. He commenced practice in the year 1870, and became a member of the Institute at the date of the Charter. He for some time held the position of County Alderman of Northumberland County Council, and was Vice-Chairman of the Finance Committee. He also occupied many other honorary positions, one of the most prominent, and to which he devoted a considerable amount of his leisure time, was that of Chief Officer of the Tynemouth Volunteer Life Brigade. Accountants who were fortunate enough to attend the Autumnal meeting of the Institute at Newcastle in 1890 will well remember his genial presence, and the interesting display, specially for the members of the Institute, he and his men gave at Tynemouth of the life-saving apparatus. He leaves behind him three sons (two of whom were in partnership with him) and one daughter.

The funeral took place on the 14th ult. at Preston Cemetery, North Shields, in the presence of about 5,000 people representative of all the institutions deceased had been in touch with.

The mournful procession, one of the largest that has ever been seen in North Shields, started from Percy Gardens prompt to the time arranged, and proceeded through Tynemouth Front Street by Spital Dene and Preston Avenue to the cemetery, the whole route of about two miles being closely lined with sympathising spectators. Following the hearse were the private carriages containing the principal mourners, and these were flanked by members of the Tynemouth Volunteer Life Brigade. The following

were included:—Mr. R. P. Winter, Mr. F. Winter, Mr. Martin Winter, Mr. A. H. Way, Mr. Chas. Winter, Dr. Frank Winter, Mr. Robert Winter, Rev. S. Pearson, Mr. W. Winter, Mr. Frank Winter, Mr. J. R. Winter, Mr. T. H. Winter, Mr. R. Maughan, Mr. F. Winter (Gateshead), Mr. John Winter, Mr. Edward Winter. Amongst others following were Mr. Ireland Wright, representing the Duke of Northumberland, Mr. H. Cray, M.P., Mr. Lawson Harris, M.P., Mr. James Knott, Mr. C. Knight, Mr. W. Angus, Mr. J. M. Criddle, Mr. H. H. Bell, Mr. W. E. Harker, Mr. D. Wilson, Mr. J. Johnstone, Dr. Harker, Mr. E. Towers, Mr. Middleton, Mr. A. Phillips, Mr. E. Robinson, Mr. T. W. Fingland, Baron Heyking, Mr. W. Graham, Mr. Wright, Mr. W. J. Bone, Mr. Wilkinson, Mr. Fairweather, Mr. W. Bird, Mr. C. Drury, Mr. Fontaine, and Mr. L. Allard.

The Northern Architectural Association was represented by Mr. A. B. Plummer. The Cullercoats Life Brigade was in charge of Chaptains Swan and Steel, and the Cullercoats Branch of the Royal National Lifeboat Institution was represented by Mr. H. R. Bailey, J.P. The Royal National Lifeboat Institution was represented by Councillor Johnstone Wallace, of Newcastle, and the Tyneside Branch by the Rev. Canon Hicks (Chairman), Lieutenant Burton, R.E., and Mr. H. Oswin Bell (Hon. Secretary). The Tynemouth Volunteer Life Brigade and the Coastguard at Tynemouth were under the command of Captain Daintree, R.N., and Chief Officer Craven. The members of the first division of the Life Brigade acted as under-bearers, and the captains of each division were the pall bearers. Mr. J. Shewell Spence, the Hon. Treasurer of the Brigade, was also present. South Shields V.L.B. was represented by Captains Walter Buckland, James Page, and J. Grimes, and Mr. Samuel Malcolm (Hon. Secretary and Treasurer). Representatives were also present from the Sunderland V.L.B.

The Northumberland County Council was represented by Alderman Middleton, of Dissington (Vice-Chairman), Alderman Geo. Bainbridge (Vice-Chairman of the Roads and Bridges Committee), and Mr. Lloyd (Accountant).

The Tynemouth Recreation Association was represented by Mr. J. A. Williamson, and the North-Eastern Railway Passengers' Association was also represented.

Amongst others present were the Mayor of Newcastle (Mr. J. Baxter-Ellis), the Deputy-Mayor (Mr. John Beattie), the Sheriff (Councillor Johnstone Wallace), Alderman Sutton, Mr. W. Rose (Hon. Secretary Northern Institute of Chartered Accountants), Mr. Jos. Carr and Mr. Sisson; Engineers' and Shipbuilders' Federation, Mr. Jas. Robinson, Secretary; Newcastle Liberal Association, Mr. W. Angus; Newcastle Liberal Club, Mr. T. H. Catchside, Chairman, and Mr. George Beattie; Messrs. Robert Stephenson & Co., Lim., of which the late Mr. Winter was

a director, were represented by Mr. W. H. Thompson, Secretary; and Messrs. Arthur & Co., Lim., Glasgow, by Mr. R. A. Wilson.

Lord Ravensworth was represented by his agent, Mr. Johnson.

The office staff was represented by Mr. Robert Taylor, the chief clerk; Mr. A. Swanston represented Mr. E. F. Wilkinson, N.E.R. passenger agent, Newcastle; Mr. H. H. Bell the International Line Steamship Co., Whitby; Mr. T. H. Catchside, the Newcastle Lifeboat Saturday Fund; and Mr. J. W. Anderson, the Tynemouth and Shields Lifeboat Saturday Fund.

The Masonic Lodges of Tynemouth—Priory, St. George's, and St. Oswin's—were represented, and the Masonic service, which included the beautiful hymn, "Days and Moments," was performed before the open grave.

The funeral service was impressively conducted by the Rev. S. Pearson, of the Tynemouth Congregational Church, and a large number of wreaths were placed upon the grave from members of the family and other sympathisers.

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## The Birmingham Chartered Accountant Students' Society.

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(Affiliated to the Working Union of Students' Societies in England and Wales.)

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### Spring Session, 1906.

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*President*—Mr. Eric M. Carter, F.C.A.

*Hon. Secretary*—Mr. Allen K. Edwards, 90 New Street, Birmingham.

Feb. 23 (Friday).—Lecture, "The Rights of Partners *inter se*." By Mr. S. S. Dawson, F.C.A., F.C.I.S., F.S.S. Chairman: Mr. A. J. Cudworth, F.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

" 27 (Tuesday).—Lecture, "Brewery Accounts and Audits." By Mr. Herbert Lanham, A.C.A. Chairman: Mr. J. Evans Rubery, F.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

Mar. 6 (Tuesday).—"Hat Night." Chairman: Mr. J. W. Hinks, A.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

Mar. 13 (Tuesday).—Debate, "That the Acts relating to Income Tax as they are at present administered, and the methods adopted in Assessing and Collecting the Tax, should be drastically amended." Chairman: Mr. G. C. T. Parsons, F.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

„ 20 (Tuesday).—Joint Debate with the Birmingham Law Students' Society. (The subject to be announced later.) Chairman: Mr. Frank S. Pearson, LL.B. (This meeting will be preceded by tea at 6 o'clock.)

„ 27 (Tuesday).—Lecture, "Debentures." By Mr. Edward Evershed, B.A. Chairman: Mr. W. Randle, F.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

April 3 (Tuesday).—Lecture, "The Accounts relating to the Formation and Reorganisation of Limited Companies." By Mr. J. Chapman, A.C.A. Chairman: Mr. J. Whitehill, A.C.A. (This meeting will, by kind invitation of the Chairman, be preceded by tea at 6 o'clock.)

„ 10 (Tuesday).—President's Address. (This meeting will be preceded by tea at 6 o'clock.)

May 15 (Tuesday).—Annual Meeting, at which the President, Mr. Eric M. Carter, will occupy the chair.

All meetings, lectures, and debates will be held at the Chartered Accountants' Library, 8 Newhall Street, Birmingham, at 6.30 p.m., unless notice is given to the contrary.

#### *Smoking at Debates.*

Members will, subject to the Chairman's consent, be allowed to smoke at debates.

#### *Tuition Classes for Articled Clerks.*

The following classes are held at the Birmingham and Midland Institute (Room No. 5), on Saturday mornings, commencing September 2nd 1905, until May 19th 1906:—

Accounting, Intermediate. By Mr. W. H. Lovatt, A.C.A., from 10 to 11.15.

Accounting, Final. By Mr. S. S. Dawson, F.C.A., F.C.I.S., F.S.S., from 11.15 to 12.30.

Law. By Dr. D. F. de l'Hoste Ranking, M.A., LL.B. Intermediate, 10 to 11; Final, 11 to 12.

#### PRIZES OFFERED BY THE SOCIETY

(To Members only)

Revised September 1898.

##### *Final Examination.*

	£	s	d
First Placed Man (in England and Wales) ..	3	3	0
Second „ „ „ „ „ ..	2	2	0
Third „ „ „ „ „ ..	1	1	6
Certificate of Merit .. ..	1	1	0

An additional Prize of £2 2s. will be awarded in the event of any of the above obtaining an Institute Prize.

##### *Intermediate Examination.*

	£	s	d
First Placed Man (in England and Wales) ..	3	3	0
Second „ „ „ „ „ ..	2	2	0
Third „ „ „ „ „ ..	1	1	0

The above Prizes, to be given in the form of books, will be presented at the next ensuing annual dinner.

## Reviews.

### **Mathieson's Highest and Lowest Prices.**

London, 1906: Effingham Wilson, 54 Threadneedle Street, E.C. Price 2s. 6d. each.

The London and Provincial Editions of Mathieson's Highest and Lowest Prices for 1906 represent respectively the 21st and 14th Editions. They are so well known as to call for no recommendation at our hands, but will be found of value to accountants who desire to know, at all events approximately, the value of quoted securities for Balance Sheet purposes.

### **Martin's Tables on the Metric System.**

By ALFRED J. MARTIN.

London, 1906: T. Fisher Unwin, 11 Paternoster Buildings, E.C. 4th Edition.

Since the previous edition of these Tables was published various steps have been taken rendering the universal adoption of the Metric System of Weights and Measures somewhat nearer, although perhaps the day when we have what the author describes as "one language in commerce" is still far off. Under these circumstances the 4th Edition will be found of value to all who are interested in the matter. There is much information in the hand-

book of general utility, dealing as it does with the methods of weight and measurement employed by a number of different representative industries.

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### **Bookkeeping Down to Date, Key to Exercises.**

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By ANDREW MUNRO.

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London, 1906: Effingham Wilson, 54 Threadneedle Street, E.C.

A Key has now been issued to the 67 Exercises included in this handbook, which was recently reviewed by us. It does not, however, dispose us to regard the text-book more favourably. Without going into detail as to the merits of the answers, we may point out that the beginner could hardly acquire a worse habit than that of omitting dates from Trial Balances, Balance Sheets, &c. Such a habit is, however, directly encouraged by the Key before us, which does not contain a single date from first to last.

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### **Stock Exchange Handbook for 1906.**

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Spottiswoode & Co., Lim., 54 Gracechurch Street, E.C.

Price 1s.

The 17th Annual Edition of the Stock Exchange Handbook has now been issued, revised throughout, and brought up to date. Certain additional securities are included in this edition, as also a number of new mining and exploration companies. The highest and lowest prices and the dividends paid during the past six years are shown, and reference is facilitated by an exhaustive Index.

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### **Municipal Accounting and Corporation Law.**

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By J. J. RAHILL, C.P.A.

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California, 1906.

A second and enlarged edition of this work, which was first issued some six years ago, has now been published, and will be found of interest to those who like to keep in touch with the accountants' literature of the United States. Part I. deals with Corporate Organisation and Management, and Part II. with Practical Accounting, Opening and Closing of Corporation Books, Partnership Conversions, Consolidation of Corporations, Bank Organisations, &c. It must be confessed that the work is not well arranged, and contains little novel in the accounting line, but those

portions which deal with the organisation of corporations in the States, and the varying State law, will be found of interest to our readers.

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### **The Modern Trust Company.**

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By F. B. KIRKBRIDE and J. E. STERRETT, C.P.A.

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New York, 1905: The Macmillan Company.

Price, \$2.50.

This is a handbook upon very similar lines to the preceding, but it possesses the advantage of being far better arranged, and of dealing more thoroughly with questions of organisation. The treatment of accounts is, it must be confessed, decidedly fragmentary. So far as it goes it strikes us as being somewhat above the average of the generality of similar works.

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### **The Annual Digest for 1905.**

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By JOHN MEWS, Barrister-at-Law.

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London, 1906: Sweet & Maxwell, Lim., and Stevens & Sons, Lim.

This is, of course, a work prepared primarily for the use of lawyers, but on account of the excellence of its arrangement and its conciseness, it might well find a place upon the shelves of all accountants who wish to keep more or less in touch with case law. As its title implies, it contains a digest of all the reported decisions of the superior Courts for the past year, including a selection of Scottish and Irish cases, with a collection of cases followed, distinguished, explained, commented on, overruled, or questioned, and references to the statutes passed. The decisions are classified under somewhat numerous headings, and a well-arranged Index increases the facility for reference.

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### **Department Store Accounting.**

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By D. C. LYONS.

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A PAPER read at a meeting of the New York Society of Accountants and Bookkeepers.

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(From *The Financial Record*, New York).

In pursuance of the invitation which you have extended to me, I shall endeavour to lay before you, in the limited time at my disposal, what, in my opinion, should be the



*modus operandi* to be pursued in the keeping of the accounts of a department store.

I have selected this subject, thinking that it might possibly interest you, in view of the difficulty experienced by almost all accountants, as you are doubtless aware, in devising a system of accounting that would give what all houses are looking for—viz., a maximum of results with a minimum of labour.

Owing to the enormous amount of detail connected with a large department store a system of accounting must necessarily be somewhat elaborate. Unnecessary elaboration should, however, be avoided, else its merits will, to some extent, be rendered nugatory.

The primary object of systematisation is to enable records to be kept in such a simple and concise manner as to render accurate periodical results easy of ascertainment.

I have made a careful examination of the systems in operation in many of the large department stores in New York and elsewhere, and I must say that I have found all of them defective, work being in many instances duplicated, and even triplicated, without giving any compensating results.

I shall now proceed to explain the various necessary forms on the voucher system basis.

This system has been almost universally adopted in America, and while it has many good features it has, on the other hand, many that are very objectionable.

Even with the exercise of the greatest amount of care, items are often duplicated; and the purchases made from any particular house for any given period cannot be ascertained without having recourse to the labour of making a list of the various vouchers, which would necessitate the expenditure of a good deal of time.

I would, therefore, recommend the keeping of a Purchase Ledger. This would, of course, entail some additional labour, which, however, would be more than compensated for by the resulting benefits.

#### *Voucher.*

On the face of voucher should be shown the total amount of expenditure on account of merchandise purchased or otherwise, and on the back the distribution thereof.

It would be advisable to draw up two voucher forms, one for the distribution of expenditure on account of merchandise purchased, direct departmental expenses, and general expenses, and the other for miscellaneous expenditures.

On back of voucher, in addition to showing the amount chargeable to each department, the number of said department should also be given.

The net, and not the gross, amount of purchase should

be distributed; otherwise it would be necessary to make an arbitrary distribution of trade discount.

#### *Voucher Record.*

This book should be as simple as possible, and should not, as is customary, be bewilderingly columnised.

It should contain the following particulars:—

- (1) Number and Date of Voucher.
- (2) Name of merchants from whom merchandise was purchased.
- (3) Particulars.
- (4) Date and Number of Cheque issued.
- (5) Total Amount of Invoice.
- (6) Merchandise Purchased.
- (7) Direct Departmental Expenses.
- (8) General Expenses.
- (9) Capital Expenditure.
- (10) Sundry Debits.

It should be footed monthly and the totals posted to their respective General Ledger Accounts.

A list of unpaid vouchers should be prepared from this book at least once a month, and aggregate thereof agreed with balance as shown by Vouchers Payable Account in General Ledger.

#### *Analysis Book.*

This book should contain an analysis of the expenditures on account of merchandise purchased and direct departmental and general expenses taken from back of vouchers.

It should be summarised monthly, and the aggregates agreed with amounts as shown in total in Voucher Record. After testing their accuracy they should be posted to the debit of the various Departmental Accounts in book showing departmental stocks and profits.

#### *General Cash Book.*

This book should contain a summary only of the daily cash receipts and payments, and the balance as shown by it should represent cash in bank, which should be kept in agreement with bank's Pass Book.

Owing to the very large number of cheques issued daily by some large houses it would be only a waste of time to enter them separately in Cash Book. I would, therefore, recommend that they be entered in total, giving the numbers of the first and last cheque issued.

This book should show on the debit side:—

- (1) Date.
- (2) Name.
- (3) Discount allowed.
- (4) Ledger folio.
- (5) Accounts Receivable (Credit Collections).
- (6) Cash Sales.

- (7) Miscellaneous Receipts.
- (8) Total Receipts.

And on the credit side:—

- (1) Date.
- (2) Name.
- (3) Ledger folio.
- (4) Cheque number from, to.
- (5) Vouchers Payable.
- (6) Miscellaneous Payments.
- (7) Total Payments.

#### *Petty Cash Book.*

Payments on account of petty expenses should be made out of Petty Cash Fund provided for that purpose.

A sufficient sum should be given to the assistant cashier, to last for, say, a week, at the end of which period he should furnish a statement of disbursements, with receipts attached, and procure a cheque for the amount expended, thereby leaving the original advance intact. A voucher should be drawn up at the same time for the amount of such petty payments, entered in Voucher Record, and distributed among the various accounts chargeable therewith.

Petty cash payments should never be made out of the general cash.

Should the Petty Cash Fund be found insufficient, an additional cheque should be procured, as making such petty payments out of the general cash leads to endless confusion, and the consequent necessity of spending a considerable amount of time in disentangling the entries which will have been made.

#### *Daily Analysis of Credit, Cash, and C. O. D. Sales, showing Amount Creditable to each Department.*

These books should be written up from summaries as handed in to the cashier at night. They should be footed daily, and aggregates transferred to book showing departmental stocks and profits.

#### *Credit Sales Book.*

After the daily summaries of the credit sales have been handed in, the various cheques, of which they show the aggregate, should be handed to typist for the purpose of having statements prepared, which statements should then be sent to the Credit Department and entered in this book, either in detail or in total.

In order to avoid confusion, it would be well to keep a Sales Book for each Ledger.

At present no such book is kept, the daily credit sales being entered direct to the debit of the customers' accounts.

The recording of these sales in a Sales Book has been objected to, the argument adduced against it being that to do so would occupy too much time, and that it is

customary to post them direct to the individual accounts. That it does save some time there can be no question, but regard should be had at same time to efficiency, as this method of posting them is eminently calculated to be productive of both errors and omissions, and to render extremely difficult the agreement of the aggregate balances of any particular Ledger with the amount the Accounts Receivable Book calls for.

The saving of time is a very good economy, but if efficiency is to be sacrificed thereto it will be found to have been quite the reverse.

It is essential to keep, if possible, all records in bound books, as, in regard to credit sales, should an account be disputed, very little difficulty will be experienced in sustaining claim if sale be entered in Credit Sales Book, even should cheques be lost or mislaid, whereas, by entering them direct into Ledger, it would be impossible to do so.

The saving of time should, therefore, be ignored, and all credit sales be entered in Sales Book and posted thence in total to individual Ledgers.

#### *Credit Collections.*

Books to record these should be kept in the Credit Department.

Separate books should be kept showing the collections applicable to each individual Ledger.

The aggregate amount should be compared daily with the amount of cash turned over to the cashier as shown by General Cash Book.

#### *Monthly Report.*

This should be prepared by the bookkeeper in the Credit Department, and handed in to Head Office beginning of each month.

The debits should consist of:—

- (1) Credit Sales.
- (2) Transfers.
- (3) Total Debits.

And credits should consist of:—

- (1) Credit Collections.
- (2) Discount allowed (which should be compared with that shown by the General Cash Book).
- (3) Transfers.
- (4) Transfers to Delinquent Ledger.
- (5) Total Credits.

In addition to the foregoing information the names of the various individual Ledgers should be given, the date on which statement was furnished, and the name of the bookkeeper by whom it was prepared.

#### *Accounts Receivable Transfers.*

This book should show the daily transfers from one

Ledger to another. As these are of frequent occurrence, care should be taken to record them, as otherwise it will be found impossible to locate a discrepancy should such arise.

*Accounts Receivable Book, showing Balance of each Individual Ledger.*

This book should show the balance of each individual Ledger, and should be written up from Monthly Report furnished by bookkeeper in Credit Department.

The amount of the credit sales should be agreed with amount appearing in book showing departmental stocks and profits, the credit collections and discount allowed, with amounts appearing in General Cash Book, and the ascertained monthly balance, with balance of Accounts Receivable Account in General Ledger.

If only ordinary care be exercised in the keeping of this book, when a list of unpaid accounts shall have been prepared at the end of each fiscal period, the aggregate of each Ledger's balances should agree with the balance it calls for. But should there be a discrepancy, very little trouble will be experienced in locating it, as a competent bookkeeper will, or at least should, always do his utmost to keep his Ledger in balance.

*Departmental Transfers.*

Transfers of merchandise from one department to another should, when made, be entered in this book at cost prices. It should be footed, and monthly balances transferred to book showing departmental stocks and profits.

The debit balances will, of course, equal the credit balances, so that the transfers will only affect the respective Departmental Accounts.

These transfers, in many houses, are of frequent occurrence, and if care be not exercised in recording them, it will be found impossible to keep accurate Stock Accounts.

When entering transfers in book showing departmental stocks and profits at end of month, the purchases charged to the departments that received the goods should be increased thereby, and the purchases of the departments from which they were received reduced accordingly.

*Merchandise returned to Merchants.*

A book should be kept showing all goods returned to merchants, the total amount of which should be debited monthly to Vouchers Payable Account and credited to the various Departmental Accounts.

It would be well before entering amount of purchase in Voucher Record to ascertain, if possible, the amount of goods to be returned, so as to make the entries in the Returns Book as few as possible.

*Departmental Stocks and Profits.*

This book should contain a column for each department, giving either the name or number of same.

It should show on the debit side:—

- (1) Inventory at beginning of month.
- (2) Purchases for month taken from Analysis Book.
- (3) Departmental Transfers.
- (4) Total Debits.

And on the credit side:—

- (1) Daily Credit Sales.
- (2) Credit Sales for Month.
- (3) Daily Cash Sales.
- (4) Cash Sales for Month.
- (5) Special Reductions.
- (6) Total Credit and Cash Sales for Month.
- (7) Percentage to be deducted from Credit and Cash Sales so as to reduce them to cost prices.
- (8) Amount of such percentage.
- (9) Credit and Cash Sales reduced to cost prices.
- (10) Inventory at end of month.
- (11) Total Credits.
- (12) Gross Profit brought down.
- (13) Direct Department Expenses to be deducted therefrom.
- (14) Net Departmental Profits for month, subject to unapportioned general expenses carried forward to credit of General Profit and Loss Account (semi-annual statement).

I have always been averse to the arbitrary distribution of general expenses, and therefore recommend that only such expenditures be charged against each department as are manifestly applicable thereto.

In order to keep Stock Accounts properly, an accurate account must be kept of transfers of merchandise from one department to another, and of special reductions made.

The keeping of an account of special reductions consumes, I must admit, a good deal of time, especially in those stores where special sales are of frequent occurrence, but it is one of the important essentials to accurate stockkeeping.

In some houses an entry is made for the profit on each sale. This entails an enormous amount of useless labour, as profits could be as accurately arrived at in the aggregate.

The application of the table which I have prepared to the credit and cash sales, in order to reduce them to cost prices, is absolutely essential to the keeping of proper Stock Accounts.

In almost all department stores an arbitrary percentage is deducted, so that at the end of each fiscal period, when an inventory is taken, there is always found to be a large

discrepancy between the amount of it and that shown by the various Stock Accounts.

When an inventory is taken the cost and selling prices should be given, so that an entry could be made crediting each Departmental Stock Account with its share of the difference.

The keeping in a proper manner of the Departmental Stock Accounts is one of the salient features of the department store accounting, and, if proper facilities be not afforded for doing so, the keeping of them at all is only a waste of time and labour.

Departmental Stock Accounts are kept for the purpose of showing the amount of stock in each department, so as :

Firstly, to enable an accurate account of the operations of each department to be prepared periodically without necessitating the taking of an inventory.

Secondly, so as to ascertain whether or not the percentage of profit added to cost price of goods has been realised ; and,

Thirdly, so as to ascertain whether or not any goods have been stolen, and, in order to give this information, an accurate account must be kept of transfers of merchandise from one department to another, and of special reductions made.

#### *General Profit and Loss Account (Semi-Annual Statement).*

This account should show on the credit side the monthly departmental profits, and on the debit side the monthly unapportioned general expenses applicable to all departments, which should be deducted from the former monthly.

The balance of this account will represent amount available for distribution among stockholders, against which all dividends, as declared, should be charged.

#### *Receiving Department.*

This is a very important department, and should be in charge of a competent assistant, who should at all times exercise great care in the examination of goods received, both as to quantity and quality.

Invoices for goods purchased should not, as is customary with some houses, be entered before being checked.

They should, when received, be handed over to the assistant in charge of this department, who should make a record of them, and after having made the necessary corrections therein return them to the office for entry. If they be entered as received it will necessitate the making of numerous Journal entries, as there are always corrections to be made, either for overcharges or shortages.

After making the necessary corrections he should insert the number of the department to which the goods were distributed, so as to enable the bookkeeper to insert same on back of voucher.

Although it is not absolutely necessary, it would be very desirable to keep in this department a book showing the monthly distributions to each department, and to compare it monthly with the Analysis Book.

#### *C. O. D. Sales Book.*

Opinions differ as to the method of keeping an account of these sales, some holding that they should be treated as cash sales, while others maintain that they should be dealt with as credit sales. I have given the matter a good deal of consideration, and as a result offer the following solution :—

When cheques are written out in duplicate they should be handed to C. O. D. clerk, who should retain original and enclose duplicate in an envelope, on back of which registered number should be stamped, entering cheque at same time in this book.

When goods are delivered purchaser should retain cheque, and money representing amount of purchase should be put into an envelope and returned either at night or the following morning to the C. O. D. clerk, who should then prepare summary representing value of goods retained and hand it with cash to the cashier, stamping opposite number of cheque representing value of goods returned the word "Returned"; he should then procure a C.O.D. credit for said goods and file it with cheques representing value of same, and enter in this book the amount of cash received and goods returned, thereby discharging debit entry.

These summaries should then be entered as cash sales in "Daily analysis of cash sales, showing amount creditable to each department," should it not be deemed necessary to keep a separate book for them.

This method of handling them will be found very simple, and will save a good deal of time and annoyance.

Goods sold C. O. D. should not be allowed to remain out for an indefinite period, and should, after the allowance of a reasonable amount of time, be returned to stock.

When writing cheques for C. O. D. sales the letters "C. O. D." are usually written after the words "Bought by," thereby indicating that it is a C. O. D. as distinguished from a credit sale.

As these letters are, however, sometimes omitted (cheques being often issued from pads containing charge cheques), it is often mistaken for a credit sale and charged accordingly, and, as cheques are not always carefully scrutinised, to disentangle such errors occupies a good deal of time.

This could be obviated by giving each salesman a stamp and insisting that each cheque be stamped "C. O. D."

Mistaking C. O. D. for credit sales, however, shows inexcusable negligence on the part of the inspector, as even

should the letters C. O. D. be omitted, such an omission should be detected when examining cheques.

Cheques for C. O. D. sales should be issued from cash pads, or, better still, from a separate pad.

#### *Comparative Statements.*

All houses of importance should keep a statistician, who should devote the whole of his time, if necessary, to the preparation of daily, monthly, and yearly comparative statements.

#### *Customers' Ledgers.*

The debits to the various accounts in these Ledgers should be taken from Credit Sales Book, and the credit collections from Credit Collections Book.

As I have remarked elsewhere, it is customary to make charges and credits direct to these Ledgers, and while it effects a small saving of time, it should be discontinued, as, should there be found to be a discrepancy between the aggregate balances of any particular Ledger and the amount the Accounts Receivable Book calls for, great trouble will be experienced in discovering it.

A list of balances should be drawn up from each Ledger monthly, if possible, as deferring doing so until the end of each fiscal period makes it much more difficult to locate a discrepancy.

These balances should be carefully examined, and those of them considered irrecoverable transferred to Delinquent Ledger.

Payments made on account of debts previously written off as irrecoverable should not be entered in Personal Account in the Ledger, even if it should be decided to reopen it, but should be entered on debit side of General Cash Book in Miscellaneous column and posted to the credit of Profit and Loss Account in General Ledger.

It should be borne in mind, however, that accounts transferred to Delinquent Ledger are not to be regarded as hopelessly bad, and persistent attempts should be made to recover them.

At the end of each fiscal period accounts should be ruled off and balances brought down in red ink figures.

#### *Salary Department.*

Owing to the large number of employees in some establishments great trouble is experienced in handling this department so as to attain accuracy, and at the same time obviate the expenditure of unnecessary time.

In some houses payments are made almost daily, so as to avoid keeping all of the employees away from their duties at the same time.

Time Sheets should be carefully written up and extended, showing the time worked by each employee; they should then be handed to cashier, who should enter

same in regular Pay-roll, and deduct from amount of weekly salary cash advances or merchandise purchased, showing in an outer column the net amount due to each.

A Pay-roll should be kept for each department, thereby simplifying the distribution of salaries.

Amount of each employee's salary for week should be enclosed in an envelope, and on receipt of same the employee should sign his or her name opposite the amount.

As this form of receipt has, however, been objected to in many houses, since it enables any one employee to see the salaries paid to the others, either a regular form of receipt could be enclosed in an envelope, or, better still, a form of receipt could be printed on back of envelope, and this envelope could be perforated so that the receipt could be easily detached and handed back to cashier or pay-master before leaving desk.

The Pay-roll could be so arranged as to obviate the necessity of writing names of employees weekly, but while something may be said in its favour, so far as the saving of time is concerned, it has some objectionable features. For instance, it would necessitate the making of numerous erasures and interlineations, owing to the fact that most employees do not remain for a lengthened period in any one house.

#### *Manufacturing Department.*

As a great many articles sold in most establishments are manufactured on the premises—such as hats, cloaks, bonnets, &c.—a Manufacturing Account should be opened in General Ledger, and charged with cost of Material purchased, Wages, Freight inwards, &c.

When all of these charges have been made, account will have been debited with the total cost of material and expenses. The number of articles manufactured should then be ascertained, and by using a simple mathematical formula the cost of each can be arrived at.

An offsetting credit should then be made so as to close this account, and the departments that received the manufactured articles charged therewith.

A separate Pay-roll should be kept for this department, and the amount of it debited weekly to the Manufacturing Account.

Before closing this account it should be ascertained that the value of all unused material has been credited thereto and returned to the department, or departments, from which it was originally received. If, however, it should be decided not to return it, the amount representing its value should be credited to the account, and brought down as a debit balance chargeable against the subsequent period.

This Manufacturing Department, in most houses, is somewhat carelessly handled, especially in respect of unused material; for although it may have been returned

to stock, yet, owing to the carelessness of salesmen or others, it very often either goes astray or is put away so carelessly as to be overlooked altogether.

No system of accounting, however perfect, can remedy such negligence, if, indeed, it may be characterised as such, as I must admit that nowadays one assistant is expected to do the work of two or three, and, as a result, mistakes will inevitably occur.

#### *Cashiers' Record of Receipts.*

It is only necessary for each cashier to keep a record of each amount he or she receives, and salesman's number.

It is usual to keep a record of each salesman's receipts, but as this entails a good deal of time and labour, without giving any compensating results, it should be abandoned.

Should there be found to be a discrepancy between the total amount of cash handed to chief cashier and the amount the daily summaries call for, then an analysis could be prepared so as to facilitate the discovery of the error.

It is contended by some merchants that should a dishonest salesman retain the amount of his sale, destroying the cheque at the same time, it could only be discovered by comparing cheques with cashier's record.

This is an erroneous idea, as, should the total amount of cash handed to the chief cashier agree with the amount the summaries call for, then it will be positive proof that no receipts have been misappropriated, always assuming, however, that it be ascertained that all cheques have been accounted for.

#### *Depreciation of Property, Furniture, and Fixtures.*

For some unaccountable reason depreciation is not generally regarded as a legitimate deduction from earnings.

No reason has been assigned for viewing it in such a light, other than that it is not customary to deal with it in arriving at net results.

That it is a proper deduction from earnings there can be no question whatever.

#### *Journal.*

The indiscriminate use of this book as a medium of transfer from one account to another is reprehensible, and it should only be used when making important transfers requiring a detailed explanation and in making opening and closing entries.

#### *Card Ledger System.*

This system has been adopted by some of the leading houses in New York and elsewhere, and while something may be said in its favour, its defects are so many and apparent, and of so serious a nature, that it is unnecessary for me to enumerate them.

In advertent to this subject, I disclaim any intention of saying anything in derogation of the honesty of employees in general.

Loose-leaf systems are highly objectionable, for while work can be more easily distributed in case of pressure of business by this method of keeping accounts, the temptation placed in the way of unscrupulous assistants is very great, as should an assistant in the Credit Department, or even in any other department, be in collusion with some of the company's debtors, the cards containing statements of the accounts of the latter could be very easily destroyed, and the only way to discover the theft (when the discrepancy between the aggregate balances, and the balance the Accounts Receivable Account in General Ledger calls for, has been ascertained, usually at the end of each fiscal period) would be to go over the cheques for the entire period, and even were it possible to discover it, and to recover the amount (cheques also may have been destroyed), the enormous amount of time it would necessarily consume would not be compensated for by the benefits to be derived from the adoption of such a system.

In regard to the saving of time, I do not see how even this could be effected to a very large extent, as accounts are, or should be, typewritten daily and the aggregates only entered in Ledger Account.

Work could be easily distributed in case of pressure by keeping for each letter, say two, or even three books instead of one book.

#### *General Ledger.*

The General Ledger should contain the following accounts:—

(1) *Preferred Stock*.—This account should be credited with the authorised issue and Treasury Account debited therewith.

Preferred stock is, as a rule, cumulative as to dividend, the payment of which, however, is contingent upon earnings.

(2) *Common Stock*.—This account should also be credited with the authorised issue and Treasury Account debited therewith.

(3) *Preferred Stock in Treasury*.—This account should be debited with the authorised issue and credited with the stocks as issued, either for cash or in lieu of property turned over.

(4) *Common Stock in Treasury*.—This account should also be debited with the authorised issue, and credited with the stock as issued, either for cash or property.

(5) *Real Estate*. Account to be debited with cost of same and with any additional purchases.

(6) *Buildings*.—This account should be debited with cost

of buildings, and with all additions and improvements thereto.

Depreciation should be deducted at the end of each fiscal period.

(7) *Machinery*.—This account should be debited with cost of machinery and with all additions thereto.

Depreciation should be deducted at the end of each fiscal period.

(8) *Store Fixtures*.

(9) *Office Furniture and Fixtures*.

(10) *Horses, Wagons, and Harness*.

These accounts should also be debited with cost of same, and with all additions thereto.

Depreciation should be deducted at the end of each fiscal period.

(11) *Goodwill*.—The amount representing the value of goodwill should be shown in a separate account in General Ledger.

There is this difference between goodwill and franchises, rights and privileges, that whereas the former may be defined as the value of the earning power of a business based upon the benefits accruing to it from the esteem in which it is held by its customers and from the prospect of their continued support, the latter may be regarded as a political gift conferring upon a company, very often for a dubious consideration, a right to carry on its operations for a certain number of years.

Franchises are, however, sometimes held in perpetuity.

(12) *Vouchers Payable*.—The balance at the credit side of this account should represent the amount of unpaid vouchers, and should be compared at least once a month with the aggregate of same as appearing in Voucher Record, since procrastinating the making of this comparison until such time as the bookkeeper might feel disposed to do so (in most firms the accuracy of the balance of this account is only tested about once a year) usually culminates in the expenditure of a good deal of time to discover errors that might easily have been detected had such a comparison been made monthly.

(13) *Accounts Receivable*.—This account should show the total amount due by customers at beginning of month, be debited with the credit sales for month and credited with the credit collections for month, and with discount allowed to customers, and transfers made to Delinquent Ledger.

Balance of it should be verified monthly by comparison with Accounts Receivable Book.

(14) *General Cash Account*.—It would be advisable to keep a Cash Account in the General Ledger, for while it is somewhat superfluous, as it should contain only a summary of the receipts and payments as shown by the

General Cash Book, it will keep Ledger in balance, thereby obviating the necessity when closing books of referring to Cash Book for a balancing figure.

(15) *Petty Cash Account*.—This account should be debited with the amount originally advanced by the chief cashier.

(16) *Insurance*.—Full details of fire insurance paid should be kept in a separate book, which should show the properties and period it covers.

All payments made should be charged to account in General Ledger, and Profit and Loss Account charged with monthly proportion.

The balance of this account should always show the amount paid in advance, and should appear separately in Balance Sheet as a current asset.

(17) *Taxes*.—As these are not payable in advance the estimated yearly amount should be based upon previous payments.

Account in General Ledger should be credited with monthly proportion, and Profit and Loss Account debited.

The amount accrued as shown by this account should appear separately in Balance Sheet as a current liability, and it should be adjusted when the exact amount of taxes for year has been ascertained.

(18) *Merchandise Account*.—This account should show on the debit side the total departmental stocks as at beginning of period and the total purchases for period; and on the credit side the total credit and cash sales for period, from which should be deducted the average percentage of profit, thereby reducing sales to cost price.

The balance will represent the total departmental stocks as at end of period, and should be agreed with the amount appearing in book showing departmental stocks and profits.

The amount of the average percentage deducted will represent gross profit, and should be carried forward to the credit side of Profit and Loss Account.

(19) *Profit and Loss Account*.—This account should be credited with the gross profit as shown by Merchandise Account and bad debts recovered, &c., and should be debited with direct departmental and general expenses, depreciation, and accounts transferred to Delinquent Ledger. The balance, which will represent net profit, should be carried forward to the credit of General Profit and Loss Account.

It will be observed that the expenditures for general expenses, &c., which will appear on the debit side of General Profit and Loss Account (Semi-Annual Statement) will appear on the debit side of this account, and consequently the monthly balance as shown by it should agree with the balance as shown by said General Profit

and Loss Account after deducting unapportioned general expenses applicable to all departments.

(20) *General Profit and Loss Account*.—This account should show the balance unappropriated as at beginning of month, and the net departmental profits for month brought forward from Profit and Loss Account.

Dividends as declared either on preferred or common stock should be charged to this account, and Dividend Account credited therewith.

(21) *Dividend Account*.—This account should be credited with dividends as declared, and debited with cheques issued in payment of same.

In regard to capital expenditures, it would be advisable to keep a separate column for them in Voucher Record, and to post them separately to their respective accounts in the General Ledger.

By keeping such expenditures in a separate column, the amount of them for each month can be ascertained at a glance.

Should the company be a private one, then, instead of keeping Preferred and Common Stock Accounts, a Capital Account should be kept for each member of the firm, and credited with his share of the capital, or surplus of assets over liabilities.

Each month the profits, as ascertained, should be distributed among partners in the proportions agreed upon, and transferred to the credit of their respective Capital Accounts, which should also be credited with interest on capital as at beginning of period and debited with drawings for period.

Should partners' drawings be very numerous it would be advisable to have a separate column ruled for them in the Voucher Record, and to post them in total every month.

Should they, however, be few in number it would be better to enter them in "Sundry Debits" column and post them separately.

The interest on partners' capital as ascertained monthly should, of course, be deducted from profits before distributing them.

Crediting interest monthly, however, is not altogether right, as it will have the effect of compounding interest monthly instead of yearly, and should only be done with the consent of the members of the firm.

Although it is customary in private concerns to credit interest on capital as at beginning of period it is not a proper way to compute it, as the drawings of some members may be far in excess of those of others.

The proper way to compute it is to average each Capital Account, and although to do so may consume a little time, it will be found to have been the most satisfactory way to all concerned.

Before inaugurating a system of accounting it should be always ascertained that those who are to operate it are sufficiently competent to do so, as it is notorious that many houses employ very incompetent assistants, such houses regarding the position of bookkeeper as a sinecure and the salary paid to him as unproductive expenditure.

This is attributable, to a very large extent, to the fact that most employers do not understand even the ordinary rudiments of bookkeeping, and when they are so fortunate as to secure the services of a competent bookkeeper they evince a decided disinclination to adequately remunerate him for his services.

Many houses employ inexperienced junior assistants, in the hope that after a protracted process of transmutation they will ultimately be metamorphosed into good bookkeepers.

Such is often the case, but until they shall have demonstrated their ability to keep books properly they should be kept in a junior capacity.

Some bookkeepers have application, but are lacking in ability and experience; while others have both ability and experience but lack application. A man possessing all of these qualifications is a very important adjunct to any firm, and the remuneration given him for his services should be commensurate with his abilities.

Many bookkeepers are merely mechanical workers, and while they often keep their books in balance cannot always assign a reason for the entries they make. Such bookkeepers are incapable of appreciating the merits of any system, however perfect it may be, and being, as a rule, opposed to innovations of any kind, interpose obstacles in the way of its installation.

Facts and figures are very different things, and during the course of my professional career, extending over a period of twenty years, both in America and Europe, I have seldom found books, even when in balance, in such a condition as to enable me to elicit facts from them without having recourse to elimination and segregation.

Those of you who are practising as public accountants, or intend at some future time to adopt accountancy as a profession, should bear in mind that a man, in order to be regarded as a competent accountant, must possess a natural aptitude for figures, experience in the manipulation of them, and should cultivate, if he does not naturally possess, the art of condensation, which consists in the putting in the smallest possible space, in an intelligible manner, the largest amount of useful matter.

He should also have a knowledge of mathematics, and should do his work on mathematical lines, always having regard to ultimate results.

In conclusion, I trust that you have found my remarks upon department store accounting interesting.



As I have already mentioned, the time at my disposal has only been sufficient to enable me to treat this important subject in a somewhat perfunctory manner.

Perhaps on some future occasion I shall have the pleasure of again addressing you, and dealing more exhaustively with the more important matters connected with it.

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### Bank Examinations.

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By ADAM A. ROSS, Junr., C.P.A.

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(From *The Journal of Accountancy*, New York.)

In discussing the question of audits, directors of national banks have often been heard to state that they considered the examinations made by the national examiners to cover all that is necessary in the way of inspection of the bank's accounts. That this is not the case is being constantly proved to us by the logic of events. While we may not reasonably expect to be wholly free from bank failures or defalcations, the comparative frequency with which both are reported in the daily press would seem to indicate that there is something at fault in the present methods of inspection and control. It is impossible for the national bank examiner to make, in the limited time at his disposal, a thorough investigation into a bank's accounts, and many of the examiners freely admit that their work is not to be considered in the light of an audit; while some, in fact, are strong advocates of independent examinations by disinterested auditors.

The work of the national examiner is special in its nature, and is done on behalf of the Comptroller of the Currency, to whom alone he is responsible. He does not act, directly at least, on behalf of the shareholders or the management of the bank, nor are his findings communicated to them except on such occasions as the Comptroller may call attention to some infringement of the banking regulations. It is true that his work embraces the counting and inspection of the bank's cash, loans, collaterals, investments, &c., as submitted to him, and also to some extent the balancing of many of the general accounts of the bank, including the individual Deposit Ledgers, Stock Ledger, &c., and considerable work that is in the line of auditing; but in addition thereto he has to keep the Comptroller advised of the amount and character of the bank's resources and liabilities, the borrowings, if any, of the directors, the loans, if any, in excess of the limit prescribed by law, its organisation and method of conducting its affairs, the plan, to some extent, of its accounts, and the means taken for their internal checking and verification; and, generally, the securing of such information

as will enable the Comptroller to judge of the bank's soundness, and to know whether or not it is being conducted in compliance with the laws under which it is being allowed to operate. The careful performance of these very necessary and important duties within the brief period usually allowed for his work must fully occupy his time and leave small opportunity for real auditing. Now and again these hard-working servants of the Government come in for considerable criticism on account of their failure to detect defalcations that have been more or less cleverly concealed for a period of years, but it will be acknowledged by those familiar with the onerous character of their work that on the whole they are rendering, within their limitations, good service to the Government and to the banking community. The blame for many of the disastrous bank defalcations and failures should rather be laid at the doors of those bank directors who, for one reason or another, fail to recognise that one of the important duties of their trusteeship is not only to keep advised of the condition of their trusts as shown by the records prepared within their own institutions, but, further, to have those records inspected and their integrity tested by independent and disinterested professional examiners.

The transactions of the modern bank are so numerous and varied, their ramifications so far-reaching, and the amounts involved so large that it would seem no more than reasonable and prudent for their managers to take steps to assure themselves of the integrity of their accounts. The practice of having the accounts of other business corporations regularly audited and certified to by professional accountants is rapidly becoming a fixed custom in this country, and it is rather remarkable that such important institutions as banks, whose methods and whose stability are of such consequence, not only to their stockholders, but to the business community generally, do not make this custom more general in their own case. There is, however, a growing tendency among bank managers, at least in the larger and more progressive communities, to delegate this important work to professional accountants.

It is true that the bye-laws of practically all banks provide for one or more detailed examinations of the assets during the year by a committee of the directors. The plan is a good one, and should be carried out faithfully. It tends to familiarise the directors with the details of their bank's workings, and has a good moral effect upon the staff. The more progressive boards, however, place their real dependence upon the work and report of their professional auditors. To them is delegated the important task of verifying the bank's accounts, and of examining and reporting upon its assets; and by this arrangement the

board is enabled to learn from independent sources the precise condition of their bank, while at the same time the proper administration of its affairs by its officers is confirmed. In such matters as the declaring of dividends, the writing off of doubtful assets, &c., the board bases its actions not upon the reports of its officers alone, but requires in conjunction therewith the statement of its auditors. Most officers are only too glad to share the responsibility in matters of such importance.

As to the scope of the examination that should be made in order to really cover all that an audit should be, it must be admitted that the character of many of the examinations which have been made in the past, and which are more or less common at the present time, has not been of a very high standard. In many cases, audits, so called, have been performed by men of comparatively narrow professional experience, but who perhaps have been more or less familiar with banking routine. Such examinations are confined usually to a count and inspection of the assets in sight, and to ascertaining that their totals agree with what the Ledger appears to call for. Usually nothing is attempted in the way of testing the records to see if they have been truthfully kept, nor is the principle of external check applied to any considerable extent. Such superficial inspections have satisfied many directors, and while they have been relatively useless to the client, they have helped at the same time, unfortunately for the profession, to set up a standard of fees wholly incompatible with good work. This, combined with the onerous and responsible character of the work when properly performed, has made the field of bank auditing rather uninviting to the accountant in active general practice. But the merits of the higher class of work are becoming better known; there is a growing demand for auditing of the right sort, and the time is not far off when all important financial institutions will apply to their own affairs the same principles of inspection and auditing that they often recommend to their customers. In England the Companies Act of 1879 has made it compulsory for every banking institution registered under its regulations to appoint auditors who have no responsibility to the directors, but only to those who appoint them—the stockholders of the bank.

The problems met with in bank auditing are not radically different from those the accountant meets in other lines of business, but to do effective work he must to a considerable extent be familiar with bank routine. Bank bookkeeping, though it may sometimes appear mysterious to the average man on the outside of the counter, is really very simple, and it is only its immense volume and the confusing and inexpressive terms commonly used in speaking of its operations and functions that make it seem formidable. Right here it might be

remarked that there is an excellent opportunity for a national body like the Institute of Bank Clerks to take up, if they have not already done so, the question of banking terminology, to the end that a book, *e.g.*, for recording amounts of interest collected, be known by some more expressive name than "red book," while the same book in another bank perhaps enjoys the equally expressive name of "blotter," or "scratcher."

Because of the different classes of banking institutions and the varying character and volume of their operations, due to locality, purpose of organisation, &c., it is difficult to set down definitely just what should constitute a perfect bank audit, but we can note in a general way certain points which must be covered in every audit, together with a few special points which are prominent and important because they are the result of experience gained in investigating defalcations.

It is important that all inspections and verifications of cash and securities be made without notice, and at such times as will admit of the least opportunity for their manipulation. The auditor should assure himself that each in its entirety is submitted to him, or take precautions to render impossible the counting of the same cash or securities a second time. It will readily be seen that in a large institution this would require that the auditor be assisted by a competent and reliable staff, if he is to perform his work thoroughly and expeditiously. It is hardly necessary to add that the totals should be compared not only with the tellers' or departmental totals, but that they should agree with the final record, the General Ledger. Care should be taken to ascertain that nothing has been omitted from the day's work in arriving at the balance, and that, on the other hand, no improper credits have been taken for disbursements. Items not cash, but carried as such, should be examined, inquired into, and reported. A careful inspection of the items constituting the cash balance will often disclose abuses which, if unchecked, lead to serious irregularities.

In attempting to verify collateral loans, particularly those on demand, it is of little value merely to compare the notes and securities on hand with the usual records in the bank, taking for granted the correctness of the latter provided the totals agree with the General Ledger. Defalcations have been successfully carried on and concealed for years by the misappropriation of partial payments on account of loans which were purposely not endorsed on the notes. In case of examination the full amount of the original loan appeared, therefore, as part of the grand total of loans, and there has usually been sufficient surplus collateral available to help bolster up the seeming genuineness of the item. Written statements of all demand loans and of all loans with collaterals should be sent to the borrowers for the purpose

of obtaining their confirmation of same. This makes impossible the carrying of fictitious loan items, and at the same time provides the only adequate verification of collaterals. The latter are subject to frequent substitutions and shiftings, and no internal checking, no matter how exhaustive, can possibly cover the verification of so large an item of assets.

Discounted commercial paper should be examined, totalled, and agreed with the General Ledger. It is not practical to apply the principle of external check to the greater part of this class of loans, as, for instance, in items of "bought" paper where the borrowers have sold their notes through a broker, and do not know by whom it is held. Items can be taken at random, however, throughout the list, which are susceptible of outside proof. Notes sent away for collection should, of course, be confirmed by correspondence.

Past, due, or suspended notes should be examined, inquired into, and reported in full to the board of directors.

Stocks, bonds, and investments present but little difficulty and can be verified by inspection of the securities on hand or by correspondence if held by other banks.

Balances due to and from other banks should be verified. At regular intervals it is usual for the bank to send to or receive from the majority of correspondents statements of account. These statements and the reports thereon, together with the "remittance" letters received from day to day, usually furnish the auditor with the information necessary for ascertaining the correctness of the various balances.

Accounts of capital stock, cashier's cheques, due bills, certified cheques and certificates of deposit are susceptible of much the same general treatment by the auditor—viz., an inspection of the cancelled items, comparison thereof with the stubs or original records, and seeing that the open and outstanding items agree with the general accounts. Items of longer standing than usual should be inquired into and, if necessary, reported to the officers.

Individual Deposits is one of the most important accounts in the bank, and it is through the manipulation of the accounts of depositors that the majority of defalcations have taken place. No one employed in this department should in any way have access to the bank's funds, nor should those in charge of the funds have anything to do with the keeping of the records of deposits. Further, pass books should be balanced or statements of depositors' accounts prepared by some one other than the individual Ledger keepers. Occasional exchange of duties and positions of the clerks without notice makes for safety, and, incidentally, efficiency. Pass books should be balanced frequently and not allowed to run unsettled for long periods. In the progressive West many banks have abandoned pass books except as a sort of receipt book. The details of each depositor's account are

written up on a statement form daily and kept ready for balancing and delivery at any time. If not called for by the end of the month, the statements are all sent out together with the cancelled cheques. This makes a "clean up" of the month's work, and leaves no accounts unbalanced by reason of the depositor's failure to leave his pass book for settlement. With these precautions faithfully adhered to, exhaustive auditing would not be necessary in this department, but the auditor must satisfy himself concerning the actual conditions. It will be necessary for him to ascertain that the Ledgers are in balance, and to test them for the purpose of detecting irregularities, if any exist. In the absence of the safeguards mentioned, pass books should be inspected and balanced, and received from and delivered directly, if possible, to the depositors. The extent to which this can be carried out must depend largely on circumstances, but in a more or less continuous audit, where the auditor has access to the books from time to time, the great majority of the accounts can probably be inspected in the course of six months or a year. Statements are sometimes mailed to the depositors by the auditor containing a memorandum of their balances at last settlement and deposits made since, and asking their confirmation of same. This method is good so far it goes, but does not by any means fully cover the situation.

The verification of earnings and expenses should receive the auditor's attention. The records in respect of these accounts are apt to be very incomplete in many banks, notably with regard to interest on demand loans. No permanent record is kept in many institutions showing how these items are made up. The interest bills are made up from the notes themselves in many cases, the interest payments are endorsed on the notes, and, upon payment and surrender of the latter, the only intelligible record of the transactions disappears from the bank. This is not unlike a merchant who would destroy his sales records as soon as each bill was collected. It is true that the loans could be restated from the books, but only after exhaustive investigation on the part of the auditor. Simple but complete records can be kept, showing, without additional work, all the details pertaining to interest collected, and which will be susceptible of very thorough audit. Errors in calculating interest will occasionally occur, and they are more apt to be to the bank's loss than otherwise. Experience has shown that both errors and misappropriations have occurred in these items in the absence of control and check by means of a permanent record.

Investigation should also be made to see that all income from investments, rents, &c., has been received and properly accounted for. Calculations of discount should be tested for at least a portion of the period under audit. Vouchers and other authority for charges to Expense Accounts should be

examined, and inquiry made as to what precautions, if any, are taken to insure the proper use of the usually large sums drawn for postage.

In addition to the work suggested there is, of course, the examining and testing of the General Ledger. The principles of auditing which would be applicable in this regard are well known and need not be dwelt on at length in this paper. Among other things the comparison of departmental books and totals with this book of final record is one of the points which would naturally suggest itself to any auditor.

The pointing out and elimination of dangerous methods or lack of methods, the improvement of existing methods, comment and suggestion looking to economy in effort or to better results for the same efforts, are all matters which come within the province of the auditor and for which only experience can qualify him.

After the completion of the work there remains the preparation and submitting of the Balance Sheet, and, if the audit be a periodical one, statement of profit and loss for the period. The Balance Sheet may be accompanied by as elaborate schedules of the assets, &c., as may be desired, but it is usual to at least present carefully prepared statements of the different classes of loans with schedules of the collaterals and their values, schedule of discounted notes showing the total of each borrower, whether single-name or endorsed, schedule of past due notes, and statement of stocks, bonds, and investments. With these details placed before them one or more times during the year, and having in mind that the separate items have been independently verified by all the internal and external checks which it is practical to make, it would seem that there would be but small likelihood of directors not knowing what was being done with the funds of their institutions.

## The Scope of a Memorandum of Association.

(From *The Solicitors' Journal*.)

THE memorandum of association of a company under the present practice is a document which aims at describing the proposed objects of the company in terms of extreme generality, yet even so there is a not unnatural disposition in the Courts to place a restriction on the verbiage of the draftsman, and the decision of the Court of Appeal in *Re German Date Coffee Co.* (20 Ch.D. 169) drew a distinction between particular and subsidiary objects. The particular objects are defined by the leading clauses, and subsequent general clauses may be properly treated as subsidiary thereto, and not as enabling the company to do everything which would fall within their terms

taken literally. "General words," said Lindley, L.J., in that case, "construed literally, may mean anything; but they must be taken in connection with what are shown by the context to be the dominant or main objects. It will not do under general words to turn a company for manufacturing one thing into a company for manufacturing something else, however general the words are." In that case the company was formed to acquire a German patent for manufacturing a substitute for coffee, and also to purchase other inventions for the same purposes, and to import and export all descriptions of produce for the purposes of food. The German patent could not be obtained, and although the company had acquired a Swedish patent, it was held that the substratum of the company's business was gone, and a winding-up order was made. "The real object of the company," said Lindley, L.J., "was to manufacture a substitute for coffee in Germany under a patent valid according to German law. It is what the company was formed for, and all the rest is subordinate to that. The words are general, but that is the thing for which the people subscribe their money." In arriving at this conclusion, reference was made both to the name of the company and to the prospectus, which made the acquisition of the German patent the leading object of the company.

The above case is the leading authority for the proposition that certain of the objects of a company are to be regarded as principal, and the rest as subsidiary, and that the principal objects give the real scope of the company's business, beyond which it cannot lawfully travel. But there are several other cases in which the same view has been taken. In *Re Haven Gold Mining Co.* (30 W.R. 289, 20 Ch.D. 151) the company was formed to acquire mines "in New Zealand or elsewhere," and in particular to carry out a specified agreement, which was for the acquisition of particular property in New Zealand; and special reference was made to this property in the prospectus. The property could not be obtained, and the Court of Appeal held that the substratum had gone. In *Re Crown Bank* (38 W.R. 666, 44 Ch.D. 634), again, North, J., looked at a circular contemporary with the memorandum as explaining the objects, and held that the company could not, by virtue of general words, go outside the business of banking, which was the main object of the company. Similarly, in *Re Amalgamated Syndicate* (46 W.R. 75; 1897, 2 Ch. 600), Vaughan Williams, J., declined to allow a company formed for a specified principal purpose, which had come to an end, to carry on other businesses by virtue of the general words in the memorandum.

In *Stephens v. The Mysore Reefs, &c., Co.* (50 W.R. 509; 1902, 1 Ch. 745) Swinfen-Eady, J., gave effect to the same distinction, and held that a company formed to acquire a

mine in Mysore could not enter upon a scheme for financing a mine in a different part of the world. The original mine having been abandoned, the proposal was that the company should obtain an option over a mine in West Africa, and if the reports were favourable should form a subsidiary company to work it. The memorandum of association provided by clause 2 that the company might acquire gold mines "in Mysore or elsewhere," and there was the usual clause as to promoting other companies, and the usual concluding general clause, empowering the company "to do all such other things as are incidental or conducive to the above objects." Swinfen-Eady, J., held, however, that the principle of *Re German Date Coffee Co.* applied. The first object—the acquisition of the particular mine in Mysore—described the principal and governing object. The remaining clauses were to be construed as giving the company full and ample powers to do a number of things, but in a manner subsidiary and subordinate to the main business. Hence he regarded the scheme for financing the West African mine as *ultra vires*.

It has been suggested, however, that in this course of decision the Court has departed from the natural meaning of the language used in the memorandum of association, and that, in construing this document, undue use has been made of the name of the company, which is subject to change, and of contemporary documents (Palmer's Comp. Prec. (8th ed.), Part I., p. 386); and it does not appear why effect should not be given to a clause which expressly authorises the acquisition of property other than that specifically mentioned, notwithstanding that its language is general. A decision upon these lines has now been given by Warrington, J., in *Pedlar v. Road Block Gold Mines of India* (1905, 2 Ch. 427), and though the learned Judge professed to distinguish *Stephens v. Mysore Reefs Mining Co.* (*supra*), yet the two cases would seem not to be easily reconcilable. In the present case the objects of the company were stated in terms almost identical with those in the earlier case. The primary object, as stated in clause 1 of the memorandum of association, was "to acquire and take over as a going concern the undertaking of the Road Block Gold Mining Co. of India, 'Lim.," and under clause 2 the company was empowered to acquire gold mines "in Mysore and elsewhere." As in the previous case, there were subsequent clauses enabling the company to promote other companies, and to do all other incidental things. The original property was disappointing, and the directors proposed to secure an option over a mining area in the Bombay Presidency. Arrangements were made to this end, but it was seen that the change of operations was of doubtful legality, having regard to the decision in *Stephens v. Mysore Reefs Mining Co.* (*supra*), and a friendly action was commenced to test the power of the company. A draft agreement had been

prepared, and under this the company might either acquire the new property directly by increasing its capital, or might form a new company for the purpose of taking over the property. It will be seen, therefore, that the circumstances were very similar to those in the case before Swinfen-Eady, J., but Warrington, J., arrived at a different conclusion, and held that the proposed scheme was *intra vires*. Indeed, if the decision in *Stephens v. Mysore Reefs Mining Co.* were strictly applied, it would be difficult for a company to do business except in the place expressly mentioned in the memorandum of association. Warrington, J., referred to the words "or elsewhere" used in clause 2, and pointed out that they would have no force if the object of the company was gold mining only in the mines referred to in clause 1. He very naturally held that he was not obliged to confine the real object of the company to clause 1, but that he could go further and have regard to the extension of those objects contained in clause 2. It is not necessary to follow the learned Judge into his attempt to distinguish *Stephens v. Mysore Reefs Mining Co.* (*supra*), but his decision will show that the cases referred to above are not to be taken as necessarily confining the scope of a company's business to the property specifically mentioned in the memorandum of association.

## Make Company Capitals Smaller, and so Defeat Revenue Exactions.

By R. GERVASE ELWES, M.Inst. C.E.

(From *The Financial News*.)

I am glad to see that *The Financial News* is pressing on the authorities the folly of driving business away and discouraging new enterprises (at the very time the unemployed problem looms so large) by the outrageous fees charged on the registration of joint-stock companies at Somerset House. The shorn lamb is already migrating to milder climes, in Guernsey and the colonies, as in the case of the Zinc Corporation, to which you have drawn attention. But may I point out another way of escaping the revenue exactions?

A "share" does not, as some Judges and other persons seem to think, mean a sum of money, but a fractional interest. Whether you hold 5,000 £1 shares in a company with a total issued capital (nominal) of £500,000, or 500 similar shares in a company owning the same property with a nominal capital of £50,000, your fractional interest in the annual profits and (in the event of a winding-up) in the net assets is precisely the same—viz., 1 per cent., or one-hundredth part; and, moreover, the intrinsic value in sovereigns of

your interest is the same in both cases, and the market value in cash rather more in the latter case, because, as a rule, shares at a premium sell more readily and at a better price than shares at a discount.

The Rand magnates, with the ability which characterises their management in every department, have seen this, and have made the nominal capital of their undertakings, in general, very low, but have issued their working capitals at a big premium—£1 shares at £2 to £5. Result, dividends of 100 and 150 per cent. and shares at correspondingly high prices. Why should not London promoters do the same? Take the case of a mine requiring, say, £150,000 working capital in cash. Instead of registering a company with a nominal capital of, say, £450,000, and issuing 150,000 shares at par, why not register £90,000 and issue 30,000 £1 shares at £5 each, producing the £150,000 required? The fees in the first case will be about five times as great as in the second. The vendors and financiers who get the vendors' shares will hold a smaller nominal amount, but worth the same money; and who is the worse except the Chancellor of the Exchequer, whom nobody will pity?

It may take a little time to educate the general investor to this plan; but the way has been prepared by the "introduction" of the shares of many non-prospectus companies on the Stock Exchange at high premiums, and if it were adopted to any considerable extent it might bring the Government to a sense of its unwisdom. I may refer any reader who feels interested to an article on "Company Law Reform" in the "Nineteenth Century Magazine" for April 1901, where I have discussed this and other reforms at greater length.

### Meetings for the ensuing Week.

**Tuesday.**—ROYAL STATISTICAL SOCIETY.—Paper, "Wages in the Engineering and Shipbuilding Trades in the Nineteenth Century," by Mr. A. L. Bowley, M.A., and Mr. G. H. Wood, at the Rooms of the Society, 9 Adelphi Terrace, Strand, W.C.

**Wednesday**—KINGSTON-UPON-HULL CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "The Winding-up of Joint Stock Companies," by Mr. W. H. Owen, LL.B., at the Hall of the Incorporated Law Society, Bowlalley Lane; 7.45 p.m.

### Personal.

MESSRS. BRODERICK, BOARDMAN & CO., Chartered Accountants, announce that they have removed from 104 King Street to Neill's Buildings, 49 Spring Gardens, Manchester.

MR. HUGH A. McHOUL, C.A., and Mr. J. H. MURRAY announce that they have commenced business as Accountants and Auditors at City Chambers, 69 Dame Street, Dublin, under the name of McHOUL & MURRAY.

### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Feb. 9th, was 168, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 97; Deeds of Arrangement registered, 71. The respective numbers in the corresponding week of last year were: Bankruptcies, 101; Deeds of Arrangement, 97—total, 198; being a decrease of 30. The total number of commercial failures recorded during the 6 weeks of the present year is 988; the total number recorded in the corresponding 6 weeks of last year was 1,053, showing a decrease of 65.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Feb. 9th, was 173. The number in the corresponding week of last year was 192, showing a decrease of 19. The total number filed during the 6 weeks of the present year is 880; the total number filed in the corresponding 6 weeks of last year was 958, showing a decrease of 78.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Feb. 9th, amounted to £1,299,506, by way of addition to £1,549,293, previously issued by the same companies. The amount registered in the corresponding week of last year was £4,470,673, showing a decrease of £3,171,167. The total amount registered during the 6 weeks of the present year was £7,834,570 (in addition to the issues in previous years by the same companies), as compared with £13,460,736 for the corresponding 6 weeks in 1905, showing a decrease of £5,626,166.

### The Profession in Scotland.

#### Personal.

Mr. William Somerville, C.A., has begun the practice of his profession at 14 Queen Street, Edinburgh.

#### Edinburgh Society of Accountants.

Bye-laws relating to the reading rooms and library to the following effect were passed by the Council of the Edinburgh Society of Accountants on 19th January 1906.

*Reading Rooms.*

The reading rooms may be used by members of the Society, by apprentices registered in the Society's books during the term of their apprenticeship and for two years after the expiry thereof, by members of the Chartered Accountants' Students' Society of Edinburgh, and such members and apprentices of other Chartered Accountant Societies as may have applied for and obtained special permission from the Library Committee.

The rooms will be open every week day from 9 o'clock a.m. to 10 o'clock p.m., except on Saturdays, when they will be closed at 2 o'clock p.m.

Magazines or papers must not be removed from the rooms, and should be restored to their places after being consulted.

*Library.*

The librarian will be in attendance from 9.30 a.m. to 5.30 p.m., except on Saturdays, when he will attend from 9.30 a.m. to 1.30 p.m.

The library is available to all members of the Society without charge, and, for the term of their apprenticeship and for two years after the expiry thereof, to all apprentices enrolled in the Society's books who pay a library contribution of £2 2s., which sum will be allowed as a deduction from the entry money payable by them when they become members of the Society. Apprentices who do not become members will forfeit this payment.

Not more than four volumes may be borrowed at one time by any member or apprentice, and no book should be retained for longer than fourteen days. If any person retains a book for longer than that period, after having been requested to return it, he shall incur a penalty of 2d. per day for each volume.

For each book borrowed the member or apprentice must fill up and sign a slip receipt, which will be cancelled on the book being returned.

Where necessary, books will be forwarded by post or otherwise at the Society's charge, but the cost of returning the books must be paid by the borrower. Books will not be sent out of the United Kingdom except under special arrangement.

Members or apprentices losing, injuring, or defacing any book by writing or otherwise must supply another copy of the work, or pay such sum as the Library Committee may determine by way of compensation.

Law reports and other books of reference, books or periodicals forming part of a series, and rare books, are not allowed out of the library.

**The Society of Chartered Accountants in Edinburgh.**

The annual general meeting of this Society was held on the 7th inst., Mr. Fred. W. Carter, President, in the chair.

The usual annual business was transacted, and the following office-bearers were elected for the ensuing year:—President, Mr. Fred. W. Carter; Secretary and Treasurer, Mr. Richard Brown; Members of Council, Messrs. Hugh Blair, Archibald Langwill, Alexander T. Niven, Alexander T. Hunter, George A. Touch, J. Hamilton Buchanan, Andrew Scott, C. E. W. Macpherson, T. P. Laird, R. E. Cameron, C. J. G. Paterson, and J. Campbell Dewar; Representatives on the General Examining Board, Messrs. James Haldane, John M. Howden, R. Cockburn Millar, J. A. Robertson Durham, H. Kenward Shiells, and the President, who is a member *ex officio*; Auditor, Mr. Edward Boyd; Law Agent, Mr. David Wardlaw, W.S.

The following new members were admitted:—Thomas Bisset Allison, 5 Ventnor Terrace, Edinburgh; James Barclay Anderson, 4A York Place, Edinburgh; John Hewat Hardie, 17 Duke Street, Edinburgh; Henry Lessels, 37 George Street, Edinburgh; Richard Henry FitzHerbert Moncreiff, 8 Magdala Place, Edinburgh; Adam Beattie Ritchie, 23 St. Andrew Square, Edinburgh; James Rose, c/o Messrs. Touch, Niven & Co., 30 Broad Street, New York; Andrew Sangster, 24 Cowan Road, Edinburgh; George Duncan Stewart, 9 Marchmont Road, Edinburgh; David Young, 30 St. Andrew Square, Edinburgh.

**Society of Accountants in Aberdeen.**

The annual general meeting of this Society was held in the Society's office, 6 Golden Square, on the 7th inst. In the unavoidable absence of the President, Mr. James Milne, through illness, Mr. Alexander Ledingham was called to the chair.

The annual report and accounts for the year 1905 were unanimously approved.

The following office-bearers were elected for the year 1906-7:—President, Mr. James Milne; Members of Council, the President, and Messrs. George M'Bain, H. H. Bower, J. A. Jeffrey, John Reid, George G. Whyte, and J. R. Flockhart; Representatives to the General Examining Board for Scotland, the President, and Messrs. Andrew Davidson and Charles Williamson; Librarian, Mr. George Smith; Auditor, Mr. C. J. Jamieson, C.A.; Secretary and Treasurer, Mr. Walter A. Reid; Representatives to the Joint Committee of Chartered Accountants of the United Kingdom, the President and Secretary.

The annual meeting of the contributors to the Widows' Fund of the Society was afterwards held, when office-bearers were appointed for the ensuing year. It was

reported that there was one annuitant, the present annuity being at the rate of £20 per annum.

Report by the Council to the thirty-ninth annual general meeting of the Society.

#### *Membership.*

The number of members at 31st December 1904 was 46  
Admitted during 1905, Mr. Charles J. Jamieson ... 1  
Membership at 31st December 1905 ... .. 47

#### *Examinations.*

The General Examining Board have had the usual half-yearly diets of examination during the past year. A copy of the Board's Report for 1905 is sent herewith to each member of the Society. Of the candidates examined at Aberdeen at the June diet, the Preliminary Examination was passed by William L. Clark (Messrs. Whyte & Williamson), Robert M'Arthur (Mr. A. S. Mitchell), Thomas Rennie (Messrs. Jas. Milne & Co.).

The Intermediate Examination was passed by Forbes M. M. Dickie (Mr. Harvey Hall), James Meston Dickie (Mr. George Dickie), William A. Duguid (Messrs. Bower & Smith), Peter Leask (Mr. Harvey Hall), Thomas J. Wilson (Messrs. Whyte & Williamson).

And the Final Examination was passed by Charles J. Jamieson (Mr. Harvey Hall), Bruce W. Milne (Messrs. Whyte & Williamson).

One candidate passed in the first division only.

At the December diet the Preliminary Examination was passed by Duncan C. Jeffrey (Messrs. Milne & Milroy), Sidney M. Cannon (Messrs. Whyte & Williamson), Andrew S. K. Macdonald (Messrs. Jas. Meston & Co.).

The Intermediate Examination was passed by Thomas B. G. Henderson (Messrs. Jas. Milne & Co.).

And the Final Examination was passed by George Anderson (Messrs. Jas. Meston & Co.), Archibald H. Maclean (Messrs. Jas. Meston & Co. London office).

#### *Apprentices.*

The indentures recorded in the books of the Society from its commencement to 31st December 1904 have numbered ... .. 104  
and there have been recorded during 1905 ... .. 4

Of the apprentices under these indentures there have become members of the Society ... .. 51

Apprentices have got their indentures discharged, but have not become members to the number of ... .. 21

And indentures have expired, but through death or other causes no discharges have been recorded, to the number of ... .. 13

85

Leaving indentures current at 31st December 1905 23

#### *Accounts.*

An Abstract of the Treasurer's Accounts for the year 1905 is appended. The accounts are certified by Mr. John R. Flockhart, C.A. The funds belonging to the Society at the close of the year amount to £965 5s. 11d.

#### *Library.*

A new edition of the catalogue was printed in May last, and a list of additions to the library since then is appended to the librarian's report.

#### *Office-Bearers for 1906-7.*

All the office-bearers retire from office at this time. Messrs. G. G. Whyte and A. S. Mitchell, members of Council, retire by rotation.

#### *General Remarks.*

The work entitled "History of Accounting and Accountants," edited and partly written by Mr. Richard Brown, C.A., Edinburgh, was published in the course of the year, and a copy of the work was given by the Society to each member. The Council have recorded in their minutes their appreciation of the able manner in which the book has been produced.

On 15th March the Institute of Accountants and Actuaries in Glasgow celebrated the fiftieth anniversary of their incorporation by a banquet, held in the Grosvenor Restaurant, Glasgow, at which many distinguished guests were present. There were representatives from all the other Chartered Accountant Societies of the United Kingdom. The President and Messrs. Hall, Machray, Whyte, and Dickie from the Aberdeen Society were present at the banquet.

A meeting of the Joint Committee of Chartered Accountants of the United Kingdom was held in June last, when the Secretary attended as the representative of the Society.

JAMES MILNE, *President.*

WALTER A. REID, *Secretary.*

Aberdeen,

31st January 1906.

Report by the Librarian of the Society of Accountants in Aberdeen to the annual general meeting of the Society, to be held on 7th February 1906.

The Librarian has pleasure in reporting that the number of books issued to the members of the Society and their apprentices, during the year 1905, is found to have been considerably greater than in any former year. The following table shows the number of readers in each of the last three years, and of books issued during that time:—

	Readers.		Issues of Books.	
	Members.	Apprentices.	Members.	Apprentices.
1903	15	22	52	81
1904	16	29	59	119
1905	15	28	103	220



During the year the Librarian prepared and circulated among the members and their apprentices a new catalogue of the books, &c., in the library. All those entitled to the use of the library are now aware of its contents, and the increase in the number of issues may be attributable to some extent to this.

The books in the hands of the readers were called in on 16th inst. for the annual inspection. The volumes, now 450 in number, were found to be in good order, with the exception of a few of those which have been frequently issued, and are, in consequence, somewhat soiled.

*The Accountants' Magazine, The Accountant, and The Investors' Review* continue to be received.

GEORGE SMITH, Librarian.

Aberdeen,

17th January 1906.

Abstract of the Treasurer's Accounts for the Year ending 31st December 1905:—

	Charge.	£	s	d
Funds at 31st December 1904 ..		933	19	11
Annual Subscriptions received from Members .. .. .	£49 7 0			
Interest received, less Income-tax ..	30 10 6			
Recording Dues of Indentures ..	12 12 0			
Entry Money (one member)—one fourth part .. .. .	13 2 6			
Miscellaneous .. .. .	42 7 6			
		147	19	6
Amount of Charge ..		£1,081	19	5
	Discharge.	£	s	d
Management and Office Expenses .. ..	26 12 8			
Expenses in connection with Examinations ..	17 15 7			
Library Expenditure .. .. .	21 6 3			
Corporation Duty .. .. .	1 9 2			
Benevolent Grant .. .. .	10 0 0			
Contribution to the Students' Society ..	3 3 0			
"History of Accounting and Accountants" ..	36 6 10			
Balance, being Funds under charge at 31st December 1905, invested as follows:—				
Loan to City of Aberdeen Land Association, Lim., on Deposit Receipt, at 3½ per cent. .. ..	£380 0 0			
Loan to Aberdeen School Board, at 3½ per cent. .. ..	500 0 0			
In Bank on Deposit Receipt ..	80 0 0			
Library, Safe, &c. .. ..	—			
Balance due by the Treasurer ..	5 5 11			
		965	5	11
Amount of the Discharge (equal to the Charge) ..		£1,081	19	5

Certified by

JOHN R. FLOCKHART, C.A.,

Aberdeen,

23rd January 1906.

Auditor.

## Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
„ 21st „ .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th „ .. .. .	3%
„ 28th „ .. .. .	4%

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## FOWLER & POTTIER, AUCTIONEERS, SURVEYORS, AND VALUERS

### CITY ESTATE AGENTS,

A. C. FOWLER, F.S.I.  
G. L. POTTIER, F.A.I.

35 WALBROOK, E.C.

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS

AND

ACCOUNTANCY THROUGHOUT THE WORLD.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

#### Liabilities Incurred by Receivers.

THE recent decision of Mr. Justice WARRINGTON in *The Halifax Joint Stock Banking Company, Lim. v. The British Power Traction and Lighting Company, Lim.*, raises a question of the utmost importance, not only to those who from time to time act in the capacity of receivers and managers appointed by the Court in a Chancery action, but also to all

business houses who from time to time supply them with goods or services on credit. In dealing with these questions of the personal liability of a receiver and of his right of indemnity against the estate, the broad issue from the professional point of view is, of course, as to whether the receiver is liable to pay out of his own pocket for goods the benefit of which he has not himself enjoyed. From the point of view of the persons supplying those goods or services the question is whether, in the event of there being a deficiency of assets, they have a right to look to the receiver personally for payment of their claims; but occasionally, as in the case under review, the question is as to whether the receiver, having been adjudicated bankrupt, the creditors can claim against the estate itself, or whether their right is limited to a right of proof in the bankruptcy.

Shortly stated, the facts appear to have been as follow: In August 1902 a Mr. WATKINS was appointed receiver and manager of the business of the defendant company in a debenture-holders' action, and leave was granted for him to raise money for the carrying on of the business up to three thousand pounds upon a charge on the assets, such loan to carry interest at 5 per cent. per annum. There was the usual declaration that the moneys so lent should constitute a first charge upon the assets in preference to the debentures. A few months later a winding-up order was made against the defendant company. In February 1903 WATKINS retired, and Mr. G. P. NORTON, F.C.A., was appointed receiver and manager in his place. The assets were eventually realised, and are now represented by a sum of £8,700 Consols in Court. The question at issue was as to the respective priorities of those

claiming against this sum. It appeared that the liabilities incurred by WATKINS, who had since been adjudicated bankrupt, were nearer nine thousand pounds than three thousand pounds; and while it was not, of course, disputed that he had authority to pledge the assets of the estate up to £3,000, the question was as to whether the claims of those claiming through him ought not to be limited to that sum, leaving the remaining £5,700 available to meet the claims of others—*e.g.*, the liabilities incurred by the subsequent receiver (if any), and the general costs of the action. His Lordship decided that it would be going too far to say that a receiver who incurred liabilities in excess of the authorised limit was not entitled to be indemnified against them, but he decided that he ought not to be indemnified unless he could show that, having regard to all the circumstances, he was justified in incurring those liabilities without first obtaining leave. The question of the priority of the various creditors would accordingly stand over until the Registrar had dealt with the matter upon those lines.

In a case such as this it is clear that if the assets do not realise sufficient to meet the claims of all parties, someone must suffer; and this suggests that anyone giving credit to receivers appointed by the Court would do well to make some inquiry either into the personal standing of the receiver or else his power to pledge the estate. Those who fail to make such inquiries cannot, of course, have any very serious grievance if the ultimate result should prove unprofitable. What seems to us more important is that those who have had no dealings whatever with the receiver should be afforded some reasonable measure of protection if the receiver discharges his duties in a negligent or careless

manner. In particular a second receiver—upon whom devolves the duty of pulling the chestnuts out of the fire and ultimately realising the assets—ought at least to be so far protected that the liabilities and costs incurred by him shall, in any event, be provided for. On the ordinary principle of salvage this would indeed appear to be only reasonable. As the question was not raised in this case we presume that the balance of the £8,700, after deducting the £3,000 that WATKINS had been authorised to spend, would have sufficed to meet all costs and expenses incurred by Mr. NORTON. Otherwise another and most interesting question might, we think, have been raised as to whether the expenses of the second receiver ought not to rank paramount over all others. Be that as it may, however, the second receiver would in normal cases have no means of knowing the exact extent of the liabilities incurred by his predecessor beyond the amount authorised by the Court, which he might reasonably regard as an outside figure. If it were to be held that that figure might be exceeded threefold, the second receiver might find, upon finishing his work, that whereas he had incurred heavy responsibilities and himself devoted much time and trouble to the discharge of his duties, the whole of the available estate and more had already been hypothecated to meet the claims incurred by his predecessor. Under such circumstances it is clear that no prudent man could afford to accept such a position without first making such an inquiry into the facts as would necessarily cause a delay absolutely fatal to the continuity of the business as a going concern.

*Primâ facie* it may seem hard that persons who have supplied goods to a receiver appointed by the Court should find that the estate is in part at least not available to meet their claims. On

the other hand, it is to the receiver personally that they look in the first instance, and if they attach any value to his right of indemnity against the estate it seems only reasonable that they should, in the first instance, institute reasonable inquiries with a view to making sure that such a right of indemnity exists. It may be asked how business houses are to assure themselves of the aggregate amount of liabilities incurred by the receiver, and it is indeed difficult to see by what means they can really satisfy themselves upon this point. The case is one in which, in any event, some of a number of innocent parties may have to suffer, and certainly there would be a far more serious injustice if it were to be held that the liabilities incurred first were to be paid first, even although they had been incurred without the authority of the Court.

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#### Associations of Accountants.

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PROPOS the letter which appears in another column, there is a passage in a well-known comic opera which runs, "When everybody's somebodee, then no one's anybody," a state of affairs which, having regard to the recent rapid multiplication of degree-conferring bodies, is abundantly realisable as far as accountancy at the present time is concerned. Yet another body, in addition to the "Institute" and "Society," is now ready and willing to confer diplomas of proficiency. We share the regret expressed by the new Association, though we cannot help thinking that it lies a little oddly in its mouth, that accountants have not a recognised legal status similar to that of members of the learned professions, which would render any attempt to introduce a new degree-conferring body in

accountancy as hopeless a proceeding at the present day as the setting up of a new College of Physicians or Pharmaceutical Society.

That the older bodies should jealously regard any possible attempt upon the part of the newcomer to attract to itself any of the well-earned confidence inspired by their degrees and membership is, of course, but natural. Being however, as they are, without sufficient protective legislation by means of which they might directly challenge the right of any possible competitor, their only resource is to do so indirectly by proceedings in the nature of an action to restrain the use of a trade name. Such an action was brought in June last against the body whose letter appears in another column by the Institute for an injunction to restrain the registration of the company with any name so nearly resembling the name of the plaintiffs as to be calculated to deceive, and from practising in such a way as to lead to the belief that such practice was the business of, or connected with, that of the plaintiffs.

Mr. Justice KEKEWICH, before whom the case was argued, dismissed the application, saying in the course of his judgment that it was impossible for the plaintiffs to contend that they had acquired any monopoly in the name "Accountants," or in the power of granting certificates; that they could not insist upon having no rivals in the field, and that if they were to have rivals those rivals must associate themselves in some way or other with the name of the profession; that the name of the defendant company was admittedly not like that of the plaintiffs', standing alone, but that it was said that the title chosen by the defendant company would lead to the members of the defendant company using the same letters

after their names as the members of the plaintiff Institute. As to this, the learned Judge said that he was not satisfied that that would be any injury to the Institute in its corporate capacity, but that, assuming that it would, the order which he was about to make would not preclude the plaintiffs from bringing a further motion to dispose of that question.

So far, then, it would appear that the title of the new Association was no infringement of that of the Institute, but, on the other hand, it remains to be seen whether an action will not lie at the suit of some Fellow of the Institute entitled to use the letters F.C.A. against a Fellow of the Association, who is apparently entitled to dub himself F.A.A. We can easily imagine circumstances in which, having regard to the decided cases, such an action would lie. This Association, although having—it must be admitted—escaped to a certain extent the Charybdis of the Institute, has apparently still to face the Scylla of the Society. In this instance the question for decision would seem likely to be raised in the form of that which Mr. Justice KEKEWICH in the *Institute* case said still remained open, and appears to be whether members of the new Association have a right to call themselves "Incorporated Accountants." Whether they have or have not must, of course, depend upon the further question whether that term has become so identified with members of the Society that it has become a trade name in the legal sense, and whether, if so, it has been used otherwise than by a member of the Society under such circumstances that such use of it would be calculated to lead the public to believe that the user was a member of the Society. The question in this form does not, it is clear, arise as between the two bodies themselves, but as

between the member of one of them alleging himself as injured and as having suffered actual damage through the action of a member of the other. It would be even more irregular on our part to dogmatise in this case than in that we have already dealt with, but we may, perhaps, point out that the Association seems to have foreseen the possibility of some such action on the part of the members of the Society, in that they recommended their members to use the designation "Incorporated Accountant Lon. Asso." Whilst forbearing to hazard an opinion whether the addition of these two abbreviations would be a sufficiently protective distinction or not, we cannot conceal from ourselves how easily, quite apart from any dishonest intention, such an addition might in time tend to get omitted or forgotten in the hurry and press of business.

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#### Secret Reserves.

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NO little discussion has been caused by the recent action of the directors of the Birmingham Small Arms Company, Lim., in following the example set by one or two other large limited companies and seeking power to create an Internal Reserve. With this end in view, it is proposed to amend the articles of association, and the necessary resolutions therefore were passed at an extraordinary general meeting held on the 24th ult., and (subject to confirmation at the ensuing meeting) will at once take effect.

The subject is, of course, capable of being, and for that matter has been, discussed both in general terms and in connection with the precise application of the principle proposed to be applied by the directors of the Birmingham Small Arms Company. Upon the whole,

objection seems to us to be more reasonable under the latter heading than the former. This company has, for the past ten years, paid an average of no less than 20 per cent. in dividends, but it is now proposed that, after paying a dividend of 10 per cent. to the ordinary shareholders, and 5 per cent. to the preference shareholders, the directors shall have power to place the remaining profits (should they be equal to those paid to the ordinary shareholders) to a fund to be called the Internal Reserve Fund, of which fund the directors shall have the entire control to such an extent that the auditors are not to be allowed to disclose any information with regard to the same, to the shareholders or otherwise.

From the point of view of existing shareholders it certainly seems a good deal to ask them to give up half their present income to the directors, for them to deal with exactly as they please, without being called upon to furnish the least information concerning their actions. The precise form that the scheme takes is also in one respect at least calculated to defeat its own ends, in that if the amount to be set aside annually be limited to a sum equal to the profits divided among the ordinary shareholders, unless the profits show a falling-off as compared with past years, it seems only reasonable to suppose that upon many occasions there will be some surplus profits which must be shown upon the face of the accounts, when, therefore, the exact amount of the profits earned becomes again a known quantity. This aspect of the matter is, however, of purely domestic interest, and may doubtless be left for the shareholders to deal with in their own way.

Of greater importance from the point of view of our readers is the proposed limitation of the auditors' duties. The auditors are apparently to

be allowed access to the accounts dealing with the Secret Reserve, but are to be denied the right to make any disclosures with regard to its magnitude, or the investments which may from time to time represent it; that is to say, they are to be made acquainted with the facts, but required to approve accounts which deliberately conceal them. It is not absolutely beyond question that such a provision in the articles of association of a company is capable of modifying the statutory duties of an auditor as prescribed by Section 23 of the Companies Act, 1900. We do not think that any articles of association can take away from the auditor his statutory right to report to the shareholders in general meeting on the accounts then submitted in such terms as he may think fit. But probably such a clause would have the effect of relieving the auditor from a charge of negligence or misfeasance if he omitted to disclose the figures which the articles of association expressly required him to keep secret. The question is, however, by no means free from doubt.

With regard to the general expediency of Secret Reserves, much has already been said in these columns in the past from time to time which need not now be repeated. Under certain circumstances it is very generally admitted that Secret Reserves are desirable, and even necessary, but it cannot, of course, be gainsaid that their effect is to make the profits of a highly fluctuating business appear to be steady, and to enable revenue losses—due perhaps to preventable causes or bad management—to be met without the fact ever coming to the knowledge of the shareholders. For these reasons it is clear that however excellent Secret Reserves may be as applied to first-class undertakings of established excellence, they might prove a most dangerous weapon in the hands of financial

jugglers. In particular does it seem to show that a clause requiring the auditor to keep silent as to the manner in which such moneys are invested is wholly bad, since upon such a point as this the desired warning might be given if necessary without disclosing a single figure.

If a secret reserve is to serve any useful purpose whatever, it is to provide moneys available for any required purpose when the need for such moneys may arise, and such need would in the nature of things almost invariably arise suddenly and unexpectedly. Such reserve, to be of any real use, must, therefore, be invariably represented by investments in gilt-edged securities. If it were so represented there would be obviously no need of secrecy; but if, on the other hand, the directors of a company are to be given *carte blanche* to apply half its profits or thereabouts in whatever manner they may think best, and to be accountable to no one for what they do, then it is clear that while some boards of directors might, of course, be implicitly trusted to do what was right and prudent, others could not be so trusted by any reasonably cautious business man. There is in such unconditional powers too much scope for the class of operation similar to those engaged in by the late Mr. WHITAKER WRIGHT. It suggests at once the alluring possibilities of a business within a business, in which losses may be sustained and no one made the wiser, profits earned and applied in what way one will; and indeed, when one gets down to bed rock, it is, of course, absolutely childish that the directors of any company should be seriously expected to rigidly account for *half* of what they do, and be allowed at the same time to keep the other half hidden up their sleeve. It would be far simpler, it seems to us, to alter the articles of association so as to prevent the publication

of any accounts whatever, for it stands to reason that the accounts of a selected series of transactions are not, and never can be, in any true sense the accounts of the business itself.

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### Competition Between Accountants.

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MOST of our readers will, we feel sure, have read with some surprise the letter from Mr. W. B. PEAT, F.C.A., the Vice-President of the Institute, which appeared in our last issue under the above heading. There was, so far as we can see, nothing whatever in his remarks reported in our issue of the 25th November last calling for explanation. Naturally, every practitioner would desire to avoid offending the susceptibilities of any section of his professional brethren, and although doubtless that feeling would be even stronger in the case of one holding so important an official position as that occupied by Mr. PEAT, we cannot help thinking that no explanation was necessary, and unless the matter is fully set forth again an altogether erroneous impression as to the true position of affairs may be caused. For these reasons we think it desirable to discuss the position anew, although we have dealt with it at some length in our issue of the 9th December last.

To begin at the beginning, it appears that the comments to which exception has been taken in certain quarters are those reported upon p. 614 of our Vol. XXXIII., where Mr. PEAT is stated to have said that there was one subject which deserved the consideration of accountants more than many other subjects, and that was that while they, as Chartered Accountants, went through very serious examinations to fit them for the duties they had to perform, they were nevertheless brought into competition with Chartered Accountants of Scotland,

Chartered Accountants of Ireland, accountants of the Society of Accountants and Auditors, and accountants with no qualifications at all. That was a condition of things which they had been trying to put right, but up to the moment without success. He did not consider that they ought to try to exclude other people from practising, but he thought they ought to be able to bring outside accountants into line with themselves in the mode in which they carried on their business; they ought to have one discipline for them all; they ought to have everyone who practised the profession of an accountant for his living under the shelter of their roof, and under the discipline of their Institute.

There are, no doubt, many who would oppose the last-named suggestion on the ground that such a levelling-up of accountants of very various qualifications would be against the public interest, and particularly unjust to those who during the past five-and-twenty years have at considerable expense taken the trouble to qualify for their profession in the regular and proper way. But we venture to think that it will come as a complete surprise to learn that among Scottish Chartered Accountants the impression appears to be that they have been gratuitously slighted in being spoken of in the same breath with Chartered Accountants of Ireland, accountants of the Society of Accountants and Auditors, and accountants with no qualification at all. There is, of course, nothing to be gained by attempting to foster bad feeling, and from this point of view Mr. PEAT's letter may be welcomed, but the fact remains that he had really nothing to explain, in that what he said was literally correct and was necessary to be stated in order that the true aspect of the problem



might be made to appear in its proper light. No one, of course, disputes that in their own country Scottish Chartered Accountants deservedly rank high, and if it is any comfort to them to have the statement repeated in these columns, we are quite willing to add that the position of a Scottish Chartered Accountant in Scotland is higher in the estimation of the business public than the position of an English Chartered Accountant in England. That, however, has nothing whatever to do with the point at issue. Scottish advocates rank high in their own country, but they are very properly not allowed to be heard at the Law Courts in the Strand, for the all-sufficient reason that their qualifications—excellent as they are—do not qualify them for the discharge of the duties that would then be imposed upon them. If the Legislature took the least trouble to see that only qualified persons were allowed to perform accountancy work, it would certainly debar Scottish and Irish Chartered Accountants, and all unqualified accountants, from practising in this country. Scottish Chartered Accountants, as such, have no knowledge of English law or English practice, and their methods of accounting are in many respects different to those which obtain in this country. They may, of course, in the process of time acquire a knowledge of English law and accountancy methods, but of the 115 members of Scottish Chartered Societies at present practising in London alone, probably few could be seriously regarded as qualified English practitioners when they first arrived in the Metropolis.

It must not, of course, be supposed that the views which we have so far stated are to be imputed to Mr. PEAT. On the contrary, his statement that everyone who practised the

profession of an accountant for his living ought to be under the roof of the Institute clearly shows that, so far at least as he is concerned, he has no desire to stop the emigration of practitioners from Scotland or to prevent their practising as qualified English accountants. For ourselves, we dissent from this view, and in the present article, and also in the one which appeared in our issue of the 9th December last, we state our reasons for dissenting at some length.

Mr. PEAT's ground for complaint rests, if the truth must be told, upon an even surer foundation, and this he makes all the clearer by declining to withdraw his comments upon the subject of competition. His statement, expressed in plain English, seems to amount to this, that he has no objection whatever to Scottish Chartered Accountants, Irish Chartered Accountants, Incorporated Accountants, and all manner of outsiders setting up in practice in this country as professional accountants provided that, having done so, they will only behave themselves as professional men, and observe and submit themselves to such discipline as is already imposed upon English Chartered Accountants. We cannot conceive why anyone should seek to avoid this discipline—which in truth is anything but severe—but it would be entirely misrepresenting facts to say that English practitioners, and especially the younger generation, are not very seriously handicapped by the unfair competition of accountants who are not members of the English Institute. As a case in point we may mention that whereas in this country touting for trusteeships in bankruptcy is not merely discountenanced, but is actually illegal, in Scotland it is, we believe, the recognised practice. It is not to be supposed that methods which

obtain in connection with one section of an accountant's work are likely to be exclusively confined to that section, and indeed experience shows that, at all events in some cases, they are not so confined. Opinions may well be divided as to the expediency of allowing all sorts and conditions of accountants to come under the shadow of the English roof, but there can be no question that the general tone of the profession would be enormously enhanced if they were obliged to submit to its discipline; and for the sake of securing that end it might well be worth while to make some very serious immediate sacrifices.

It is greatly to be regretted that, in spite of all the efforts that have been made by the Institute during the past few years to arrive at a better understanding upon the subject, no satisfactory progress appears to have been yet achieved, but for our own part we cannot help thinking that this failure is largely due to the manner in which the subject has been approached. There has been in the past too much anxiety to make concessions without securing in return such guarantees as were necessary in the interests of younger members in England, and still more in the interests of the English public, which rightly looks upon the term "Chartered" Accountant as being synonymous with "qualified." Of course, in the present unsatisfactory state of the law the English Institute has no monopoly of the term Chartered Accountant even within the confines of England and Wales, but that is no reason why it should make overtures to Chartered Accountants who from the English point of view are unqualified, unless they, in their turn, in consideration of such recognition, are willing to take some reasonably effective steps to prove that they have become competent to

practise in England as well as in Scotland. The legitimate competition of the 115 Scottish practitioners in London, and the by no means inconsiderable number in our leading provincial centres, need not perhaps be regarded with any feelings of alarm, but so long as matters remain upon their present footing the public is liable to be misled, and it is from every point of view undesirable that there should be in this country Chartered Accountants in practice who are not amenable to the discipline of the English Institute. There is little doubt, we think, that the general body of members of the English Institute will support the Vice-President in his protest against unfair competition.

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### Weekly Notes.

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**L. & N. W. R. Audit.** The following letter, which appeared in a recent issue of *The Financial Times*, does not appear to have evoked any rejoinder:—

SIR,—I see from the directors' report which reached me on Saturday that Sir Edward Lawrence, who has been one of the auditors of the London and North-Western Railway Company for thirty years, has resigned his office, and that in accordance with a resolution adopted at the half-yearly meeting of shareholders, held on the 21st February 1897, the audit committee has recommended a successor. I notice with regret that the gentleman selected, who is quite unknown to me, does not appear to be a professional accountant, and I venture to think that the audit committee would have better represented the interests and wishes of the proprietors had they exercised the power which this ancient resolution confers, by recommending the appointment of a properly qualified person for this very important post.

I am, &c.,

P. D. L.

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**Australia and Dumping.** A Bill has recently been introduced to the Commonwealth House of Representatives by the Minister for Trade and Customs, with a view to the prevention of dumping and the repression of commercial trusts in Australia. It provides that wherever the Comptroller-General of Customs has reason to believe that goods are being imported which may be disposed of within the Commonwealth in unfair competition with Australian

articles, a Board of three persons will be appointed at the instance of the Minister of Trade and Customs to report thereon for the consideration of the Governor-General. Power is taken under the Customs Act, 1901, to prohibit the importation of such goods, either absolutely or subject to such conditions as the Governor-General deems just. The commercial trusts are defined by the Bill as those which, by creating monopolies and restricting trade, have an injurious effect upon Australian industries.

**American Trusts and Political Subscriptions.** Immunity from political interference is one of the most valued privileges that American trusts can purchase, and judging by recent revelations they have not hesitated to pay the price without a murmur. Public opinion seems to be awakening at last, and a special correspondent of *Commercial Intelligence* says that a measure has been introduced in the Senate and Assembly at Albany which has every prospect of being placed on the statute book. Its proposal is that any firm doing business in the States should be forbidden to "use or offer, consent, or agree to use, any of its money or property for, or in aid of, any political party, committee or organisation, or for, or in aid of, any candidate for political office, or for nomination for such office, or in any manner use any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used." The penalties to be inflicted are very severe, so that if the measure passes there ought to be a period of clean business for once in a way, which will be a welcome change.

**Municipalities and Income Tax.** An interesting case came before the Income Tax Commissioners at Derby last week. The Derby Corporation claimed the right to retain the tax deducted from dividends and interest paid by it in respect of borrowed moneys. On behalf of the Inland Revenue authorities it was admitted that the Corporation was entitled to deduct and retain the tax on interest paid out of profits already brought into account, but it was argued that the Corporation should be treated as two separate bodies—namely, as a municipal authority and as a sanitary authority. For the Corporation it was contended that, although the Borough Fund and the District Fund had to be kept separate, there was no distinction in the conduct of the

business, and the right was claimed to set-off losses on sanitary undertakings against profits on municipal undertakings in the same manner as a private trader having varied interests might now do. The Commissioners decided in favour of the Corporation, but it is reported that an appeal will probably be filed.

**Pluralist Directors.** The twenty-seventh annual edition of the "Directory of Directors" has just been published, and its merits as a work of reference are too well known to need eulogy. It is interesting, as a little study in plurality, that Mr. C. Rube still holds premier place, having 42 directorships to his credit, Mr. Edmund Davis also retains the second position with 35, and Mr. William Dalrymple replaces last year's tie with 29 directorships. Next in order are:—

Mr. Charles S. Goldemann	...	...	23
„ E. W. Janson	...	...	23
„ Charles F. Rowsell	...	...	23
„ John Taylor	...	...	23
„ L. Wagner	...	...	22
„ Oliver Wethered	...	...	22
The Earl of Chesterfield	...	...	20
Mr. H. Wilson Fox	...	...	20
Sir Charles Tennant	...	...	19

**Banking Competition.** From time to time we read various kinds of lamentations over the decline of etiquette, which foreshadows stress of competition in all professions and industries, but in no calling does there appear to be the feverish belligerency which is said to exist in the banking world. Constantly the approaching by a banker of another banker's customer in the hope of alienating his custom by the promise of better terms or cheaper accommodation is deplored, and now a correspondent of a financial contemporary, after minutely detailing the *modus vivendi* of the iniquitous practice, winds up by suggesting that as it is well-nigh impossible to obtain preferential terms for day to day loans from City banks, the representatives of the boards of joint-stock banks should form an association with a view to agreeing upon a universal rate of interest to be charged upon loans and overdrafts, and to decide the question of interest on deposit and minimum balance accounts. We fear that the suggestion is merely a counsel of perfection, for presumably every application for an overdraft requires to be con-

sidered on its merits, and the circumstances of the applicant must necessarily be weighed. Since the tendency of banking is towards amalgamation and consolidation, and as the prospects of a successful combine are greater when the number of competitors is small, the desired end will be arrived at sooner or later on the community of interest principle. Meantime it appears to us quite possible that, as evolution is still active, the banking profession can hardly hope to escape the thrall of changing conditions, and it is by no means impossible that the tendency is still imperfectly understood in financial parlours.

**What is "Fire"?** According to a recently-reported decision of the United States Circuit Court of Appeals (Eighth Circuit) the word "fire" in an insurance policy is, in the absence of any expressed intention to the contrary, to be given "its ordinary meaning," which, we are told, includes the idea of "visible heat (*sic*) or light." Hence the destruction of wool as a result of spontaneous combustion due to damp was held not to be a loss arising from "fire," and not to be covered by a fire insurance policy, for although there was smoke and great heat, there was no visible flame or glow. This is the first occasion we remember having heard of "visible heat."

**The National Mutual Life Association of Australasia, Ltd.** The report and accounts of the National Mutual Life Association of Australasia, Ltd., for the year ended 30th September last, which were submitted at the 36th annual general meeting held on the 22nd December last, show a very remarkable access of business during the year under review. During that period the renewal premiums amounted to £447,102 gross, while 10,143 new policies had been issued, insuring £2,615,216, representing annual premiums of £91,351 and single premiums of £11,265. With so large a ratio of new business it is not surprising to note that there has been no very marked increase in the amount of funds on hand, which at the close of the year stood at £4,195,849 against £3,932,367 on the 1st October 1904. It will interest our readers to note that as against directors' fees of a little less than £4,000 the auditors' fees were £741 6s., thus showing that Australasian companies are more fully alive to the advantages of a full professional audit than some of the leading institutions in this country.

**Municipalities and Official Audits.** At the present juncture it may be of interest to our readers to note that in addition to all the metropolitan boroughs the following are at present, or will very shortly be, audited by official auditors appointed by the Local Government Board:—Bournemouth, Cheltenham, Merthyr Tydvil, Plymouth, Poole, Southend-on-Sea, and Swindon. In the case of the London boroughs the Government audit was, of course, provided by the Act of 1899, which brought them into existence. In the case of the eight provincial boroughs enumerated the official audit is provided for by special Act of Parliament, generally in response to pressure exercised by the Local Government Board. In one or two cases, however, we believe that the adoption of the official audit has been entirely voluntary.

**The Increase in Rates.** At the recent general meeting of the Milwall Dock Company the chairman mentioned some somewhat startling figures showing the enormous increase of local rates in the neighbourhood of London during the past generation. In 1875, he stated, the Milwall Dock Company's local rates were 4s. 11d. in the £, in 1885 they were 6s. 7½d. in the £, in 1895 they had risen to 7s. 9½d. in the £, and in 1905 were no less than 12s. in the £. This represents an increase of upwards 140 per cent. in thirty years, but the actual increase is, of course, considerably greater, as the company's properties are doubtless assessed at a much higher figure now than in 1875. Whatever may be said about the improved conditions of living that have been brought about by municipal activity during the past generation, it is certainly difficult to see what benefit a company like this receives in exchange for its 12s. rate which it did not receive in 1875 from a rate of 4s. 11d. in the £. One cannot help thinking that there must at least be something in the suggestion that as companies are disfranchised their particular needs are not considered when it comes to the spending of public moneys. The suggestion made at the recent meeting of the East and West India Docks Company a few days since, that the directors and manager should be registered as the owners of property, and thus qualify for election to local bodies, seems well worth considering. They could, of course, not be expected to acquire such property at their own expense, and there seems no reason why companies should invest in property they do not require for the mere purpose of attempting to exercise some contro

over local administration. This end could be just as well served, in the case of new undertakings, by some portion of the company's property being held by individuals who have executed a declaration of trust in favour of the company; or if that should be held to be insufficient to qualify them as burgesses, it should not be difficult to find some means by which they could be placed on the Register in respect of a portion of the properties owned by the company. The true remedy for this anomalous position is, however, that companies which have by law a distinct entity of their own should be entitled to vote as much as any other persons.

**Corporations as Carriers.** There appears to be some little misunderstanding as to the decision in the *Manchester Corporation* case, and probably some official announcement would be welcomed. *The Municipal Journal* says:—

"The Corporation practically won its case and an important precedent has been established."

"It was this part of its business" (the collection and delivery outside the tramway radius) "which the High Court has declared to be beyond its powers; but the Chairman of the Tramway Committee says that this extra tramway business is only an infinitesimal part of the whole."

"The judgment, however, establishes the right of the Municipal Corporation to carry on a general parcels delivery business—to act, in fact, as a common carrier."

"Municipalities can for this purpose establish dépôts, provide horses, vans, and all the other necessary equipment of a parcels system. They can continue to use the cash on delivery system, insure parcels, collect parcels from railway companies, and deliver them to railways, but always on the one condition that the parcels must pass over some part of the tramway system. It does not apparently matter what the destination of the parcel may be so long as on part of its transit it comes within the category of tramway-borne goods. The judgment, as will be seen, opens up a large and new field for municipal enterprise. A tramway system would be of little service for carrying parcels unless the Corporation could provide the necessary machinery for collection and delivery. This it could do and push its business within its own sphere without any restriction."

*Commercial Intelligence* says:—

"The Corporation are entitled to work the tramway system in the city for the conveyance of passengers, goods, parcels, &c., but it was shown that they had erected dépôts miles outside the tramway area for the

purpose of receiving and despatching goods, and had purchased horses and vans for conveying the goods. The Judge came to the conclusion that in this the Corporation had acted in excess of their powers and granted an injunction restraining them from paying for the vans and horses out of the borough fund. This judgment if upheld will not, of course, prevent the Manchester or any other city corporation from entering upon the business of carriers, as some of our contemporaries seem to imagine, but will prevent their so doing without Parliamentary sanction."

We should like to know whether the contention of *The Municipal Journal*, as italicised by us, is to be taken seriously.

**The Audit of Trustees' Accounts.**

Our contemporary *The Solicitors' Journal* states that Mr. Justice Kekewich recently made an order in chambers authorising trustees in whom property belonging to infants was vested to have the accounts of the trust audited annually by a Chartered Accountant, and to defray the cost of such audit out of income. There is, of course, nothing very novel about this order, in that it has for many years been the rule that trustees were authorised to employ accountants to keep the accounts of the trust when they were of a complicated or voluminous nature. Where the beneficiaries are under age, and cannot therefore approve accounts rendered to them annually, it is obviously only reasonable that in the interests of the trustees they should be periodically audited. Clearly, however, such an audit would not estop the beneficiary from going into the matter on his own account when he came of age.

**Municipal Indebtedness.**

The "Special Commissioner" of *The Municipal Journal*, who contributed the first of a series of articles anent the recent visit of the County Councillors to Paris to our contemporary's issue of last week, states that it will reassure the "extravagant" councillors of the United Kingdom to learn that the municipal debt of Paris is over one hundred million pounds sterling, and that nobody seems to grumble about it. He adds that the municipal revenue receives considerable assistance from concessions accorded to omnibus proprietors, and adds: "It is an anomaly that the 'bus companies, which use the roads more than any other form of traffic, should pay no special contributions to

"their maintenance. There are forms of monopoly and privilege rampant in this country which it is difficult to make the Paris councillors even understand." If these are the mixed sort of impressions that are likely to be brought home by County Councillors from their recent visit to Paris, it is perhaps to be regretted that the visit took place. The municipal indebtedness of Paris is, of course, extraordinarily heavy, but, bearing in mind the relative scope of that municipality and of the London County Council, the comparison is altogether against the last-named. On the subject of exacting fees from omnibus proprietors for concessions, it may be pointed out that in this country no monopoly is conferred by the local authority, and that, therefore, the position is entirely different to that obtaining in Paris. If a special charge were to be made merely on the ground that the omnibus companies used the roads more than any other form of traffic—an assertion which is certainly open to question—obviously the only fair and equitable course to pursue would be to go back to the old turnpike system. There is no doubt something to be said in its favour, but it may be remembered that a Government once went out of office *inter alia* because it sought to place a tax upon wheels, and divide the proceeds among paving authorities by way of a grant in aid.

**Gas Companies and Depreciation.** The wording of the letter from "A.C.A.," which appeared in our last issue under the above heading, seems to suggest that our correspondent has already made up his mind upon the points concerning which he asks our opinion, and is not seeking information. The matter is, however, one of some little interest, and as—if our surmise be correct—it is one upon which opinions are divided, some little discussion at least will not be amiss. Our own view is that there can be no possible justification for deliberately charging direct to Revenue what is known to be a Capital charge. We do not consider that the auditor, in the discharge of his duties, ought to take into consideration merely the interests of shareholders in the somewhat exceptional case of gas companies working under the sliding scale. The existence of the sliding scale regulations makes consumers, as well as shareholders, directly interested in the accuracy of the accounts, and we can conceive no possible justification for an auditor deliberately certifying that which he knows to be wrong, merely because such a course may suit the material interests of the

shareholders by whom he was appointed and paid. If, as in the case of electric lighting companies, there were an independent auditor appointed in the interests of consumers, the position might be different, but even then it would be extremely difficult to justify.

#### **The Attendance at Students' Societies' Meetings.**

From time to time a question has been raised as to the discouragingly small attendance of members at the meetings of the various Students' Societies, and from time to time this has been explained upon several grounds, and combated by various expedients. One of the most practical that has so far come to our notice is mentioned upon p. 210 of our last issue, where we reproduce the Syllabus of the Birmingham Chartered Accountant Students' Society for the current session, which states that members will (subject to the Chairman's consent) be allowed to smoke at debates. There can be little doubt when the pipe is for ever present that this expedient will tend to improve the attendance at such meetings, and we think it more than likely that by producing a more informal atmosphere it will also tend to materially improve the quality of the speeches. Should the movement prove the success that we anticipate, the question may, we think, well be raised whether it might not be further extended—subject, of course, to the Chairman's consent in each case. Thus, for instance, if it were to become general for smoking to be allowed after lectures, there would probably be considerably less difficulty in inducing members to stay and take part in the discussions thereon.

#### **The Vacant Official Receivership.**

In connection with the post of Official Receiver at Canterbury, which is now vacant, we are informed that the Board of Trade proposes to make a somewhat new departure in connection with these posts in the provinces. Hitherto only Official Receivers paid by fixed salaries have been required to devote the whole of their time exclusively to their official duties. In the case of the Canterbury appointment, however, it is proposed that whoever is appointed shall similarly devote the whole of his time to the duties of the receivership, to the exclusion of all private practice. The post is open to solicitors and accountants, but early application is, of course, necessary. Full particulars can be obtained from the Board of Trade.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### The East Ham Audit.

*(To the Editor of The Accountant.)*

SIR,—Some little time ago reference was made in various journals and in the local press to a report of Mr. Boggis-Rolfe, the District Auditor for this district, on his audit of the accounts of the East Ham Urban District Council, and in connection therewith certain statements reflecting upon the conduct of the officers were made. The report was published in the local press, and certain comments made with regard to myself which necessitated my taking proceedings against the *Stratford Express* for libel. The result has been payment of a substantial sum as damages, all costs, and a public apology inserted in the paper, a copy of which I enclose for your information.

I shall esteem it a great favour if you can see your way to insert the apology in question, with any comment you may think fit to make in the next issue of your paper.

Thanking you in anticipation,

I am, dear Sir, yours faithfully,

GEO. H. FRY.

East Ham, 15th February 1906.

*Apology to Mr. G. H. Fry (Borough Treasurer).*

In a leading article of our issue of September 9th 1905 we published of and concerning Mr. G. H. Fry, the Borough Treasurer to the East Ham Corporation, certain comments reflecting upon his official conduct, and in one of the paragraphs we stated that he had made a statutory declaration that all moneys, assets, and liabilities had been brought into account and submitted to the auditor, yet the accounts relating to what Mr. Boggis-Rolfe called the "Secret Trust Fund" had been withheld.

We admit the statements concerning Mr. Fry contained in the paragraph referred to are defamatory and untrue. We regret having made the statement that Mr. Fry had made a false statutory declaration, for which statement there is no foundation whatever, and we unreservedly and unequivocally withdraw any imputation upon Mr. Fry in respect of such declaration.

We also published a paragraph in the said issue in which we alleged that Mr. Fry had been guilty of entering fictitious amounts on a voucher.

We did not intend that such words should refer to Mr. Fry, but we now admit they are capable of being so understood, and we withdraw any imputation upon Mr. Fry in respect of the statements, express our regret for their publication, and apologise to Mr. Fry for any trouble or annoyance he may have suffered by reason of our comments which reflected upon his integrity and that he was unworthy of public confidence.

[We commented upon this matter in an article which appeared in our last issue.—Ed. *Acct.*]

### Remuneration of Trustees as Directors.

*(To the Editor of The Accountant.)*

SIR,—Referring to the paragraph reproduced from *The Financial Times*, appearing in the issue of *The Accountant* of 27th January 1906 (p. 124), I should be obliged if you would state if this decision has been reported in your "Law Reports" during 1905.

If the case has not been reported could you, through your columns, give an outline of the case.

Yours faithfully,

JOHN HAMER.

Manchester, 16th February 1906.

### Directors' Expenses.

*(To the Editor of The Accountant.)*

SIR,—I shall be much obliged if you will answer the following question :—

Is it legal for the directors of a limited company, who receive no remuneration for their services as directors, to vote themselves travelling and hotel expenses incurred by them when attending meetings, when no such power is conferred on them by the articles of the company?

Yours truly,

[We think so.—Ed. *Acct.*]

No. 81.

**Income Tax.***(To the Editor of The Accountant.)*

SIR,—John Brown, Senr. (and presumably John Brown, Junr.), accounted for his own salary for 1902-3-4, having fulfilled all the obligations of citizenship *re* income-tax. One is somewhat surprised that the Surveyor has not assessed Samuel Smith as for a "continuing business."

But it reads somewhat too consistent to be a wholly hypothetical case.

I have had the pleasure and privilege of acknowledging in your columns the *usual* consistency of Surveyors, and trust to do so yet again.

Yours truly,

A PRACTISING ACCOUNTANT.

*(To the Editor of The Accountant.)*

SIR,—May I venture to dissent from the views of Mr. Herbert Edwards, as expressed in his letter which appears in your issue of 17th inst.

He says, "If John Brown, Junior's assessment for 1905-6 was arrived at on an average of past profits without omitting from each of the years taken the salary he received as manager such assessment would manifestly not furnish a true forecast of his income." That proposition is in a sense true, but is not to the point, neither is the further argument based on the question of capital invested in the business.

It is a well-established principle that a Taxing Act must be strictly construed whether its working prove equitable or otherwise. The question, therefore, resolves itself into one of legal liability, and not one of abstract justice.

It is governed by the Fourth Rule applying to first and second cases under Section 100 of the Income Tax Act of 1842, which for the sake of clearness I quote in full, as follows:—

"*Fourth.*—If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in such partnership, either by death, or dissolution of partnership as to all or any of the partners, or by admitting any other partner therein, before the time of making the assessment, or within the period for which the assessment ought to be

made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession within such respective periods as aforesaid, the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein mentioned, notwithstanding such change therein or succession to such business as aforesaid, unless such partners or such person succeeding to such business as aforesaid shall prove, to the satisfaction of the respective Commissioners, that the profits and gains of such business have fallen short or will fall short from some specific cause, to be alleged to them, since such change or succession took place, or by reason thereof."

Omitting for the moment the separate question of profits and gains falling short from specific cause and confining attention to the main question of assessment, it will be seen that the rule covers all changes in proprietorship, and provides that, notwithstanding any such change, the duty payable by "*any person . . . .*" "shall be computed and ascertained according to the profits and gains of such business *derived* during the "respective periods herein mentioned"—that is to say, according to the three years' average, or, in other words, on the same basis as the old proprietor would have been assessed. The word "*derived*" must surely refer to a past fact, and not to the hypothetical case of what the profits would have been if a manager's services had not been required, and "*any person*" must include the son and late manager in the case under discussion. The position would appear to be the same as if, for instance, the old proprietor, in consequence of illness or for other similar cause, had been incapable of managing the business for three years, and on recovery had discharged the manager and so increased his profits by the amount of the salary. If instead of the son and late manager the purchaser were an outsider, able and willing to personally manage the business, would your correspondent contend that having discharged the manager he must pay on an equivalent increase of profit?

On the question of capital and its investment, your correspondent's view seems to me to be equally fallacious. In the actual case of John Brown, Junr., it is more than probable that the capital with which he



purchased the business was wholly or partly provided out of the sum he received under his father's will. In any case, he only put into the business the equivalent of what the executors withdrew from it, and my argument as to the purchase by an outsider applies equally to this point. To emphasise it further, let us take an analogous case (governed by the same Rule) of the admission of a partner. Assume that, instead of dying, John Brown, Senr., had taken an outside partner who brought in, say, £500 (or £5,000) capital, and undertook the management. The salary would be saved, and it is reasonable to suppose that the extension of the business by the use of the new capital would produce a very much larger profit, yet, if my reading of the Rule be correct, the assessable income would be:

Profit 1902 .. .. .	£300
„ 1903 .. .. .	280
„ 1904 .. .. .	240
	<hr/>
	3)820
	<hr/>
	£273 6 8

If John Brown, Senr.; were still carrying on the business he would be assessed on that amount less £160 abatement, and John Brown, Junr., as the successor should pay on the same amount. In the case of partnership, each partner would claim to be separately assessed, and (assuming equal shares) each would be exempt, notwithstanding the additional capital brought into the business.

So long as assessments are made upon an average of years they can rarely or never work with equal fairness to the Revenue and the taxpayer. In the case of diminishing profits, the taxpayer suffers an "injustice" whilst if they tend upwards he pays less than he should. It may be further pointed out that Section 133 also works entirely to the advantage of the taxpayer, as in the case of diminishing profits he obtains relief, whilst the Inland Revenue authorities have no corresponding right in the case of growing profits. The same remarks apply to the relief obtainable by the taxpayer under the Rule quoted above, when profits and gains fall short from some specific cause.

I must apologise for the length of this communication, but I think the matter is one of sufficient interest to justify its full consideration.

Yours faithfully,

19th February 1906. JAMES E. COSTELLO.

(To the Editor of The Accountant.)

SIR,—In the Weekly Notes in your issue of Saturday last you point out that in income-tax matters "the question at issue is not what is the justice of the matter, but what is the law."

I fully agree with this statement, and further agree that in the supposititious case referred to the business must be treated as a continuing business. Will you, however, kindly say in which of the Income Tax Acts it is provided that where a salaried servant becomes a partner in or proprietor of his former employer's business, that in making the next return the salary paid to him while he was a servant must be eliminated from the three years' accounts required for ascertaining the average upon which the assessment must be based. I am quite aware that it is the *practice* of Inland Revenue officials to do this, but as it is agreed that the question is "what is the law?" I should like to know where any authority for this practice is to be found in the Income Tax Acts.

I cannot agree that the question of whether a new manager is appointed has any bearing upon the matter; it is very certain that if the new proprietor appoints a manager at a higher salary than he drew as a servant the Inland Revenue authorities will not, in making the assessment, allow any charge in the accounts for his salary (until in due course it comes into average in the ordinary way). Your note appears to suggest that the Inland Revenue authorities would in such a case allow a sum equivalent to that paid to the proprietor when he was a servant.

Yours, &c.,

LAW v. PRACTICE.

February 21st 1906.

(Chartered Accountant.)

[If there be no new manager appointed the facts seem to point to an amalgamation of the incomes of father and son, and the rules as to amalgamations apply.—ED. ACCT.]

London Chartered Accountants Students' Society.

(To the Editor of The Accountant.)

SIR,—What has happened to the Committee of the above Society, and are we to have no Spring Session this year? Nearly every other Students' Society has not only published its syllabus, but begun its session. At the annual dinner in November last the Chairman of the Society particularly emphasised the increased interest that was being taken in the Society's lectures, &c., but I fear this interest will not be long sustained if there are many who, like myself, have refused several engagements for Wednesday evenings in this month

in order to be present at the Society's meetings, presuming, of course, that the Spring Session would have commenced—as it has done in past years—about the second Wednesday in February. Such members no doubt feel much as I do.

February 20th 1906.

DISGUSTED.

### Bankrupt's Application for Discharge.

(To the Editor of The Accountant.)

SIR,—With reference to your interesting leading article in last week's issue of *The Accountant*, headed "Some Recent Bankruptcy Decisions," we beg to draw your attention to the very interesting judgment by Mr. Registrar Linklater in connection with the applications for discharge by the former partners in the firm of John Brown & Sons, bankers, which was reported in full in *The Times* of the 14th inst. We think that as an instance of a sweeping condemnation by a Registrar of the High Court of the attitude of an Official Receiver, it is almost unique.

Yours faithfully,

MAURICE JENKS, NYE & CO.

London, February 20th 1906.

[We hardly think this case of sufficient general interest to justify detailed comment. It is true that the Registrar decided in favour of the application, but we do not see how the Official Receiver could have acted otherwise than he did.—Ed. *Acct.*]

### Net Profits Earned by a Company.

(To the Editor of The Accountant.)

SIR,—I should like to have your opinion, as well as that of any of the profession, in a case which was recently brought under my notice. I was asked to define the amount of the "net profits earned by a company" as distinguished from the "net profits of a company." The conclusion I arrived at was that the "net profits earned" were those shown by the Working Account after payment of all trading charges, and as brought forward into the Profit and Loss Account. On the other hand, the "net profits of a company" were the profits of the Working Account referred to, after deducting such Capital charges as Interest upon Debentures or Mortgages, Sinking Fund for Redemption of Debentures, Directors' and Auditors' Fees, or, in other words,

the balance of Profit and Loss Account, after providing for all compulsory Capital charges. My conclusions, which are open to criticism, are arrived at upon the assumption that the company had borrowed capital in the form of debentures or otherwise, and that provision had to be made for repayment of same.

Yours, &c.,

LEITH.

[Perhaps some of our readers will oblige our correspondent. It is news to us to learn that any of the items named—except Sinking Fund—are a Capital charge.—Ed. *Acct.*]

### Auditing by Tender.

(To the Editor of The Accountant.)

SIR,—I enclose copy of a telephonic message received by one of my clerks here to-day, and copy of my letter in reply. If you can kindly spare a few lines of comment as to what is the proper course under such circumstances in your Weekly Notes, I should feel much obliged. You will kindly not disclose the name, of course. I would not trouble you but that I have had to make similar replies before, and quite recently: it may be, therefore, that others of your subscribers have had similar experiences, and it would be well to know how to act.

Yours truly,

19th February 1906.

MEMO.

*Enquiry per Telephone (19th February 1906).*

"Recommended by ——— Bank. Write to-night's post your charge per day inclusive for first year's audit of 'The ——— Co., Lim.' In no hurry for audit. Am asking price from several firms of accountants, so you will know what to do."

[COPY.]

DEAR SIR,—I am much obliged for your kind enquiry as to audit fees per telephone to-day, but as I understand that you are also asking quotations from other accountants, I do not desire to compete with them in charges.—Again thanking you, yours truly,

MEMO.

### Association of Accountants.

(To the Editor of The Accountant.)

SIR,—The attention of the Council of this Association has been called to a paragraph in the current number

of your paper (p. 167) under the heading "Associations of Accountants," in which, after referring to a recent notice issued by this Association, you state "this is a 'customary way of advertising the existence of a 'concern which might otherwise be overlooked.'" These words convey an innuendo which, if allowed to pass without refutation, might be detrimental to this Association.

It is a matter of surprise to the Council of the Central Association of Accountants that the recognised organ of the Institute of Chartered Accountants should assume this attitude, inasmuch as the policy of the Council has been framed so as to avoid collision with the interest of the Institute of Chartered Accountants, or the Society of Accountants and Auditors.

I am directed to assure you that the object of the notice in the newspapers was not to advertise this Association, but to safeguard our members from being confounded in the public mind with those persons styling themselves "Incorporated Accountants" who are not members of the Society of Accountants and Auditors.

I may say that this Association is comparatively well known, and is now firmly established with a large and increasing membership.

I shall be glad if you will be good enough to insert this letter in your next issue.

I am, Sir, your obedient servant,

W. GILL HALL, A.S.A.A., F.A.A.,  
*Secretary.*

5 & 6 Great Winchester Street, E.C.

February 14th 1906.

## The Institute of Chartered Accountants in England and Wales.

THE following is a list of applicants, admitted at the Council Meeting held on the 7th February 1906, who completed their membership before the 22nd inst. :—

### *Associates elected Fellows.*

Addinsell, William Arthur (W. Arthur Addinsell & Co.),  
4 Corbet Court, Gracechurch Street, E.C.; and at Birmingham.

Attfield, James (Allen, Biggs & Co.), 38 Parliament Street,  
Westminster, S.W.

Chifferiel, Arthur Gerald (Godfrey & Chifferiel), 4 Bloomsbury Place, Bloomsbury Square, W.C.

Egerton, John Edward (Egerton, Tomlinson & Chater),  
2 Gresham Buildings, Basinghall Street, E.C.

Harris, William (Craig, Gardner & Harris), 20 Copthall Avenue, E.C.

Hicks, George (F. W. Dawe, Hicks & Co.), Devon & Cornwall Bank Chambers, Bedford Street, Plymouth.

Hoare, Robert Henry, Broad Street House, E.C.

Kelleway, Archibald John (Josolyne, Miles & Blow),  
28 King Street, Cheapside, E.C.; and at Manchester and Paris.

Linnett, Charles James (Henry Lovelock & Linnett),  
1 Bird-in-Hand Court, 76 Cheapside, E.C.

Mordant, Philip Mordant (Philip Mordant & Co.),  
9 & 10 Fenchurch Street, E.C.

Rowley, Frank, 34 & 36 Gresham Street, E.C.

Shaw, William Henry (Armitage & Norton), Market Place,  
Dewsbury.

### *Admitted as Associates in Practice.*

Bishop, Ernest Edwin (E. Kelsham Bishop & Co.), 61 King William Street, E.C.

Bowden, Hugh Hunter (Charlesworth & Bowden), 77 King Street, Manchester.

Jones, John Stewart (Baskerville Simmons & Stewart Jones), 26 North John Street, Liverpool.

### *Admitted as Associates not in Practice.*

Armstrong, Herbert Joseph, clerk to Bauwens & Son,  
88 Newman Street, Oxford Street, W.

Ash, Garton Harold, clerk to J. H. Duncan & Co.,  
39 Coleman Street, E.C.

Ashworth, Harry, clerk to Carter & Chaloner, 16 Kennedy Street, Manchester.

Bailey, John Vernon Moncas, "Hillside," Sydenham Hill Road, S.E.

Baxter, Alexander James, clerk to Goodricke, Cotman & Co., Moorgate Station Chambers, E.C.

Blore, Frank Harold, clerk to Derbyshire Brothers,  
Bentinck Buildings, Wheeler Gate, Nottingham.

Boss, John George, Junr., clerk to T. Fyton, County Chambers, Westgate Road, Newcastle-upon-Tyne.

Boyd, William Robson, clerk to Astbury, Turner & Co.,  
Great Northern Chambers, Market Place, Great Grimsby.

Brandon, Noel Harold, clerk to Ball, Baker, Deed, Cornish & Co., 1 Gresham Buildings, Basinghall Street, E.C.

- Byrne, Andrew James, 8 Havelock Terrace, Garstang Road, Preston.
- Candler, Arthur Percy, clerk to Lewis Hardy, 8 Bream's Buildings, Chancery Lane, E.C.
- Charlton, Robert Carr, clerk to C. Brannan, 12 King Street, Cheapside, E.C.
- Coates, Christopher George, clerk to Lucey, Hicks & Walters, 15 George Street, Mansion House, E.C.
- Collier, Edwin Walter, clerk to Edwin Jones & Co., Eldon Buildings, 16 Eldon Street, E.C.
- Cowley, Douglas Sainsbury, clerk to Mellors, Basden & Mellors, 1 King John's Chambers, Bridlesmith Gate, Nottingham.
- Crabtree, Bertram Turner, clerk to Richard Crabtree & Son, St. George's Chambers, Hebden Bridge.
- Croggon, Josiah Fenwick Sibree, B.A., clerk to James & Edwards, 5 Coleman Street, E.C.
- Danby, Silas, clerk to Sands & Flinders, City Chambers, South Parade, Nottingham.
- Davies, Arnold Thomas, clerk to Walter Meacock & Co., Carlton Chambers, 45 High Street, Newport, Mon.
- Davies, Edward Emerson, clerk to W. C. Clarke & Dovey, 31 Queen Street, Cardiff.
- Day, Archie Frederick, clerk to Ball, Baker, Deed, Cornish & Co., 1 Gresham Buildings, Basinghall Street, E.C.
- de Paula, Frederic Rudolf Mackley, clerk to C. F. Cape, 58 Moorgate Street, E.C.
- Duffield, Ernest, clerk to T. F. Armstrong, 14 Ironmonger Lane, E.C.
- Easton, Cyril, clerk to G. A. Gale, Royal Insurance Buildings, Bowlalley Lane, Hull.
- Edwards, Thomas Rutherford, clerk to Slater, Cook & Co., 53 Lord Street, Liverpool.
- Evens, Frederick William, clerk to Robert H. Marsh & Co., 73 Ethelburga House, 70 Bishopsgate Street Within, E.C.
- Flinn, Thomas Coudren, clerk to Finney & Son, Central Buildings, 41 North John Street, Liverpool.
- Ford, Charles Herbert, clerk to W. M. Richards & Co., Alliance Chambers, Horsefair Street, Leicester.
- French, Charles William, 51 Balmoral Road, Willesden Green, N.W.
- Garnsey, Gilbert Francis, clerk to Muras, Harries & Higginson, The Bridge, Walsall.
- Garth, Humphrey, clerk to A. E. Preston, 55 Cornmarket Street, Oxford.
- Gillespie, Henry Robert, clerk to Sands & Flinders, City Chambers, South Parade, Nottingham.
- Green, Frank Edwards, clerk to Broderick, Boardman & Co., 104 King Street, Manchester.
- Grundy, Norman Denis, clerk to Craggs, Turketine & Co., 52 Coleman Street, E.C.
- Hamp, John, clerk to Black, Geoghegan & Till, 8 Old Jewry, E.C.
- Harvey, Frederick Percy, clerk to Ashworth, Mosley & Co., 45 Spring Gardens, Manchester.
- Hedley, John Stokoe, clerk to R. W. & J. A. Sisson, 13 Grey Street, Newcastle-upon-Tyne.
- Henderson, Ian Macdonald, B.A., clerk to J. M. Henderson, 2 Moorgate Street Buildings, E.C.
- Hewson, William Kirk, clerk to John Parker & Sons, 62 John Street, Sunderland.
- Hirst, William Henry, clerk to W. Dawson, West Riding Bank Chambers, Dewsbury.
- Holland, Talbot William, clerk to Price, Waterhouse & Co., 3 Frederick's Place, Old Jewry, E.C.
- Inkson, Henry Foley, clerk to Monkhouse, Goddard & Co., St. Nicholas Chambers, Newcastle-upon-Tyne.
- Jackson, Thomas, clerk to Leather & Veale, East Parade Chambers, Leeds.
- James, Charles Leonard, clerk to Mackintosh & Ridsdale, Winchester House, Victoria Square, Birmingham.
- Kerr, Alexander, 17 Arundel Avenue, Sefton Park, Liverpool.
- King, William Frederick, clerk to Kirby & Stedman, 4 Broad Street Buildings, E.C.
- Kitson, Thomas Arthur, "Heytor," Alexandra Road, Upper Parkstone, Dorset.
- Lancaster, John Herbert Leonard, clerk to Ogden, Palmer & Langton, Finsbury Pavement House, E.C.
- Locking, Harold William, clerk to E. W. Shaw, 22 Silver Street, Hull.
- Lovsey, Arthur Cornelius, clerk to Hayes, Morriss & Co., 28 Basinghall Street, E.C.
- Lowe, Alfred Assheton, clerk to C. F. Cape, 58 Moorgate Street, E.C.
- Lumb, Lionel, 16 Devonshire Avenue, Southsea.
- Lunt, Henry Julius, clerk to J. Lunt, York Chambers, 27 Brazennose Street, Manchester.
- Macnaught, David Don, 376 Upper Brook Street, Manchester.
- Matthews, John Hoghton Stabb, clerk to J. Todd, 3 Winckley Square, Preston.

- Mayhew, Basil Edgar, clerk to Price, Waterhouse & Co., 3 Frederick's Place, Old Jewry, E.C.
- Millons, Thomas Arthur Lauderdale, clerk to Gilchrist & Tash, Midland Bank Chambers, Exchange Place, Middlesbrough.
- Mills, Frederic Henry, 15 Chichester Street, Chester.
- Moore, Frank, clerk to J. W. Best, 20 Bank Street, Sheffield.
- Mundell, Keith Hamilton, "Denholm," Poole.
- Nicholls, Stanley Harold, B.A., clerk to A. H. Downes, 241 Salisbury House, London Wall, E.C.
- Nixon, Horace Helden, clerk to Atkinson & Crowther, 10 East Parade, Leeds.
- Page, Arthur Ashwell, clerk to Annan, Kirby, Dexter & Co., 21 Ironmonger Lane, E.C.
- Pearson, Alfred George, clerk to T. F. Judge, Parliament Chambers, Quay Street, Hull.
- Percival, John Edward, clerk to Maurice Jenks & Co., 6 Old Jewry, E.C.
- Price, Ernest Lloyd, clerk to E. C. Price, 57 Moorgate Street, E.C.
- Remon, John Anthoine, clerk to Carter, Clay & Lintott, 1 & 2 Queen Street, Cheapside, E.C.
- Rigby, Arthur Guy Paget, 15 Winckley Square, Preston.
- Robson, Thomas, clerk to J. A. Walbank, 34 Grey Street, Newcastle-upon-Tyne.
- Routledge, Walter George, clerk to Monkhouse, Stoneham & Co., 695 Salisbury House, London Wall, E.C.
- Rozelaar, Abraham, clerk to Maurice Jenks & Co., 6 Old Jewry, E.C.
- Saunders, Bertram Lloyd, clerk to Whinney, Smith & Whinney, 32 Old Jewry, E.C.
- Schofield, Edward Billington, clerk to Whittaker & Provis, 3 Mount Street, Manchester.
- Scholefield, Joshua Bew, clerk to Blease & Sons, Fenwick Chambers, Fenwick Street, Liverpool.
- Scott, Walter Ernest, clerk to Locking, Scott & Co., Parliament Chambers, 5 Parliament Street, Hull.
- Skinner, John, clerk to Cooper Brothers & Co., 14 George Street, Mansion House, E.C.
- Smith, Claud Eastlake, clerk to Woodman, Tulloch & Edds, Mansion House Buildings, 4 Queen Victoria Street, E.C.
- Smith, Rowland Evans, clerk to Ogden, Palmer & Langton, Finsbury Pavement House, E.C.
- Southcombe, Ralph, clerk to Cooper Brothers & Co., 14 George Street, Mansion House, E.C.
- Stephenson, Geoffrey Christian, clerk to Price, Waterhouse & Co., 3 Frederick's Place, Old Jewry, E.C.
- Storrs, Leonard Carswell, clerk to H. E. Sweeting, Chancery Chambers, 13 Duke Street, Cardiff.
- Stray, Arthur Frank, M.A., clerk to Alabaster, Stray & Co., 107 Wool Exchange, Coleman Street, E.C.
- Taylor, John Samuel Crawford, clerk to Samuel Taylor, 3 Temple Buildings, Goat Street, Swansea.
- Tewson, Roland Stuart, clerk to C. F. Kemp, Sons & Co., 36 Walbrook, E.C.
- Theedam, Charles, clerk to A. E. Mason, 200 Wolverhampton Street, Dudley.
- Timmins, Frederick Oliver, clerk to Agar, Bates & Co., 110 Edmund Street, Birmingham.
- Turner, Edgar John, clerk to E. Littlejohn, Wilson & Co., 85 Gracechurch Street, E.C.
- Venables, Benjamin Charles Stanley, clerk to Good & Son, Moorgate Station Chambers, E.C.
- Walker, Matthew Henry, clerk to Gane, Jackson, Jefferys, Wells & Co., 66 Coleman Street, E.C.
- Warmington, Gerald Henry, clerk to J. Todd, 3 Winckley Square, Preston.
- Webster, William Douglas, clerk to Crewdson, Youatt & Howard, Bassishaw House, Basinghall Street, E.C.
- Welch, Wilmot, clerk to Bournier, Bullock & Co., Albion Street, Hanley.
- White, Alfred, clerk to Thos. Smethurst & Co., Prince's Chambers, 26 Pall Mall, Manchester.
- Whitley, Arthur de Winder, clerk to Jonathan Whitley & Son, Temple Buildings, Keighley.
- Womersley, John William, clerk to F. Womersley & Co., 77 King Street, Manchester.
- Worthington, Harold, 92 Brackenbury Road, Preston.
- Worthington, John Harold, clerk to Halliday, Pearson & Co., District Bank Chambers, 13 Spring Gardens, Manchester.
- Wright, Robert, clerk to Brown, Peet & Tilly, Bank Buildings, 1 High Street, Croydon.
- Yates, William Henry, clerk to R. R. Preston & Co., 2 New Street, Leicester.

### Meetings for the ensuing week.

- Monday.**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Investigation Committee, at 2.30 p.m.
- EDINBURGH CHARTERED ACCOUNTANTS' SOCIETY.—Joint meeting with Scots Law Society.

*Tuesday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—General Purposes Committee, at 3 p.m.

BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Lecture, "Brewery Accounts and Audits," by Mr. Herbert Lanham, A.C.A. (*this meeting will be preceded by tea at 6 o'clock*), at the Library, 8 Newhall Street; 6.30 p.m.

*Wednesday*—SHEFFIELD CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Debate, "Is Municipal Trading desirable?" (Affirmative: Mr. A. H. Heap, A.C.A.; Negative: Mr. F. C. Young, A.C.A.) at the Library, Hoole's Chambers, Bank Street; 6.45 p.m.

*Friday*—LEEDS AND DISTRICT CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.—Lecture, "Rights and Duties of Trustees," by Mr. R. A. Chadwick, M.A., LL.M.

## Manchester Society of Chartered Accountants

AND

## Manchester Chartered Accountants Students' Society.

### Faculty of Commerce, in Relation to Accountants.

By Professor CHAPMAN, M.A., M.Com.

(Dean of the Faculty of Commerce of the University of Manchester.)

A LECTURE was delivered by Professor CHAPMAN, of the University, Manchester, on Monday, the 5th February, to the joint meeting of the Chartered Accountants Society of Manchester and the Manchester Chartered Accountants Students' Society.

The Secretary of the Students' Society (Mr. Alfred Wood) read letters from various gentlemen regretting their inability to be present, among whom were Mr. J. Wharton Pollitt, F.C.A., Mr. A. A. Gillies, F.C.A., and Mr. J. Pepplewell, F.C.A.

The Chairman (Mr. A. G. Wilde, A.C.A., President of the Students' Society), in introducing the lecturer, said that he could have wished that some more worthy representative of the profession had occupied the chair, in order that more honour could have been paid to Professor Chapman. He was inclined to think that he (the Chairman) was the first Manchester accountant student to take advantage of the educational facilities afforded by the lectures and classes at Owens College. He believed there were differences of opinion as to the value of the work that such an institution as the Faculty of Commerce was

capable of performing in fitting men for a commercial career, but he did not agree with that view. The principle of specialising in education was the principle that had been recognised by accountants for several years. The business of the accountant touched on so many points that there was hardly any branch of knowledge which would not be found useful to him at some time or other.

Professor Chapman said: Mr. Chairman and gentlemen, I am delighted to be here this evening, and particularly because of the interest which the accountants of Manchester took in the movement for the establishment of the Faculty of Commerce, particularly my friend Mr. Gillies, who devoted himself unsparingly to assisting us in the initial stages.

Let me say at the outset that my attitude is not one of dogmatism in respect of this matter—that of the Higher Education for business. I have held from the beginning that the right course can only be discovered through the interchange of views between people engaged in teaching in the Universities and business people. The policy of the University of Manchester from the beginning of this movement has been, not to offer to the surrounding community a cut-and-dried scheme, but to be prepared to adapt its teaching to the need of its environment. We are pursuing that policy now. There is in connection with the Faculty of Commerce an Advisory Committee, representative of many businesses, which discusses questions of policy and curriculum. Through proceeding in this way, ultimately we ought to achieve the ideal.

My lecture this evening will be historical, comparative, and analytical, as far as a short lecture can be—that is, I shall try very briefly to sketch the history of the movement for Higher Commercial Education, to describe what is being done in different countries, and then to approach in a critical frame of mind the question of what the nature of that training should be.

But let me first say an introductory word as to the special interest which this question ought to have for accountants. I think there are mainly three reasons for which a higher education for business should be of peculiar interest to accountants. Firstly, because an accountant's profession is the most general of all professions, as your President has reminded you. No man of commerce needs a wider knowledge of business in its varieties, methods, and changes than the accountant, whose work is co-extensive with the economic field. Secondly, the accountant's function is one of the most specialised, as well as one of the most general. The science of figures is become exceedingly exact. I think it is not going too far to say that accountancy is now a subject in which scientific research may be conducted. It is a new, growing science, concerned with the statement in figures

of the economic position of businesses. I think the accountant will bear me out that accounting is now only in its infancy, and that a very great deal more in the way of scientific measurement of the economic state of businesses has to be done in the future than is done to-day. As the physiologist to-day is trying to measure vital forces quantitatively by means of pulse-tracings and brain-tracings, so is the accountant trying to reflect in accounts the vital state of business organisms. The problem of the latter is not yet completely solved. Thirdly, the accountant is a doctor, and, while it is desirable that every member of the community should know something of physiology and anatomy, it is particularly desirable for the doctor to have that knowledge. Commercial science is the physiology and anatomy of the business doctor. Economics, accounting, and statistics at the present time all more or less run into one another. Accounts are attempts to measure economic forces, and a study of economic forces, I should submit, will undoubtedly be of assistance to the man who is working out the most suitable forms of accounts for different purposes.

So much by way of suggestion as to the special appeal that University education for business should make to the accounting profession.

Now I will say a few words as to the history of this movement for higher commercial education. It began, broadly speaking, a dozen years ago in this country; and the demand for some higher preparation for business, corresponding to the training for industry that is provided in schools of technology, was met with a promptitude which is not commonly regarded as characteristic of the English.

An important conference was held by the Society of Arts in 1897. The next year a conference was held by the London Chamber of Commerce. That conference reported strongly in favour of the establishment, in London, at any rate, of what was in fact a Commercial University. A Committee of the London County Council, meeting the next year, reported equally favourably. In 1900 several meetings were held by various Chambers of Commerce in this country and in Scotland. There was a diversity in the recommendations of the several conferences, but the general tenor of all the recommendations was that the time had come for creating institutions which would do for business what the School of Technology had done for industry. The march of science was drawing nigh to business or commerce proper. There was a time when no active pursuits necessarily implied a scientific training. The doctor was apprenticed to another doctor to learn the craft or mystery of doctoring. Science seized the business, we will call it, of the medical profession,

and transformed it into a profession. The time came when the doctor was expected to study scientifically the human organism in its form and functions. It was considered necessary that he should receive a strictly scientific groundwork before he practised upon his patients. As to law, increasing numbers of lawyers are passing through faculties of law. Recently it was generally recognised that education beyond that which is received in schools would be desirable for people working in the industries, and technical schools and polytechnics were established. Mistakes were made at first. That was only to be expected. The training first conceived was a training which tended rather to turn out the workman in the form of a finished machine, and not primarily to teach the workman to think about the problems with which he would be confronted in the workshop, or at any rate to teach the man at the head of affairs to think in the workshop. Of course, men taught themselves to think in the industries, and many men received a higher training and applied the intellectual habits which they had acquired to a new set of problems. There followed a period of dissatisfaction and reaction, and as a result, in this city, for instance, in the place of the technical schools we obtained the School of Technology, which represents an altogether higher ideal. In schools of technology the problems of the technical methods pursued in industries are taken as the data for scientific work. In Manchester, I am delighted to say, the School of Technology is a part of the University.

So far the movement was highly satisfactory. The march of science had covered industries more or less adequately, but business was left out. Then at the end of the nineteenth century there appeared in this country, in Germany, in Belgium, and the United States the demand for a Faculty corresponding to the Faculty of Medicine.

We will now consider how this demand was met. Of course, the demand being so new, the response has not yet been large. The London School of Economics was established in 1894, but it was not until two or three years ago that the course led up to a degree. It now leads up to the B.Sc. in the London University. In effect, the London School of Economics is a Faculty of Commerce to the University in London, but it has borrowed the old designation instead of inventing a new title for itself. Economics is not the only subject that is studied in the School of Economics—not the only subject which has a place in the curriculum leading up to the B.Sc. in economics. Accounting and many special business subjects have a place.

Owens College, in 1899, took a half-step forward and instituted higher commercial certificates. In 1903 it went still further, and established a curriculum specialised for

the needs of business men, upon which a degree should be given; and I am happy to say that it followed the example set by Birmingham in 1900, and decided upon a degree of B.Com. The new title corresponds to LL.B., B.Mus., B.Sc., M.B., B.D., B.A., and B.Sc.Tech. in the other faculties.

Let me remind you that there is nothing in the least degree inferior (I do not know that it is necessary to say it even) in the new degree of B.Com. Its status in the University is absolutely the same as the status of every other degree. We merely, in selecting that title, gave voice to our convictions that it is possible to have in a University a specialised training for business. We considered that it was misleading therefore to give another title—the title of B.A., for instance—unless, of course, the University used B.A. for everything, and possibly it is the wisest thing to do. That is what is done by Oxford and Cambridge.

In 1905 Leeds followed with its Faculty of Commerce. Liverpool instituted a School of Commerce in 1899, but it has not created a faculty. Trinity College, Dublin, took last year the step which we took in 1899, and instituted higher commercial certificates. Oxford, in 1903, instituted a diploma in economics. Cambridge has gone further, and instituted a tripos in economics and political science. A specialised training is given very similar to ours, though not quite so technical.

Though we have done much we have not done nearly so much as some other countries. For instance, the United States. The American to-day is probably the boldest experimentalist in education of any person in the world. He makes mistakes, but he corrects them. Probably the rate of progress in the United States in educational matters is much more rapid than in almost any other country, with the exception, perhaps, of Germany; but greater originality is shown in educational matters in the United States than in Germany. They possess magnificent Schools of Commerce, and have done a good deal of University preparation for business. Harvard, for instance, has a very important department. How large it is you may gather from the fact that there are twelve instructors in economics alone, most of whom are well known, many of whom are highly distinguished. Chicago has a faculty which is little smaller than that of Harvard. Pennsylvania has a Faculty of Commerce known as the Wharton School of Finance, which contains twenty-one teachers of economics and special business subjects. The University of Wisconsin has nine such instructors. The University instruction for business is on a more magnificent scale in the United States than here, and I should attribute that mainly to two influences—one the boldness of the American educationists, who are prepared

to try almost any idea and are not afraid to spend money on their ventures; and, secondly, on the open-minded attitude of the American business man. He is always looking for new ideas—a University-trained man is a new idea, and he is ready to try the University-trained man. In the United States, in consequence, such a man has very little difficulty in getting a start. It is the response made by the business world to this movement on the part of the Universities; it is their readiness to try new plans which largely accounts for the enormous step forward that has been taken in the last few years. In the University of Manchester the Faculty of Commerce has been instituted two years, and we have thirty-one students reading for degrees in commerce. In the Universities in America to which I have referred the students are numbered by hundreds.

Next let us glance across the Channel. France, years ago, started a number of commercial schools which did good pioneer work, and prepared business people for this conception of training for business. However, they were only schools, and, in my opinion, they began the specialised training too early. In educational matters I believe in a broad training up to the age of 16 or 17 in the ordinary school subjects, especially those which make boys really think. Belgium went a little further with its Higher School of Commerce, founded as a result of the International Exhibition held in England in 1851. "A prophetic idea," Professor Sadler called it. The idea was that young men, after leaving school, should go for two years through a specialised course of technical business subjects. It did more than people were prepared for at that time; it does less than the public is demanding now. From a study of the curriculum at Antwerp I should judge that the training is more technical than I should consider desirable; much of it is too technical to be regarded as University teaching. The time was not ripe for a Commercial University Faculty. The people of Antwerp did what could be done at the time; in fact, more than people were ready to understand. Some years they had a difficulty in getting students; now the numbers are considerable. There, as in Manchester, the management is shared between the teaching members of the Institute and a committee of Antwerp business men.

The most advanced institutions founded abroad recently are in Germany. Germany and the United States lead the van. Germany has instituted four Commercial Universities, as they must be correctly termed. They are not commercial schools, like the commercial schools of France. One is at Cologne, another at Leipsic, another at Aachen, and the fourth at Frankfort. Those of Cologne and Leipsic are the biggest. Broadly speaking, the distinction between the German and American experiments



is that the Higher School of Commerce in the United States is connected with the Universities. It is a new wing, so to speak, built on to the old University; whereas in Germany, for certain reasons, Commercial Universities (*Handelshochschulen*) have been established as entirely new institutions. The American model is the best, I feel no doubt. It is the American method that is being pursued in this country, for a variety of reasons. One is that the expense is less: the teaching provided in the other faculties can be drawn upon. If the institution for higher commercial training is independent it is necessary to have a good deal of duplication. We have additional laboratories and more teaching of technological subjects. Another reason is that the new faculty shares in the tradition of the University with which it is connected.

This completes my historical and comparative review, and now a few words must be said about the character of the teaching in a Faculty of Commerce, and what is being done in Manchester. Firstly, we will ask the question, What should be the general nature of the education given in the Faculty of Commerce? Broadly regarded, it may be said that the commercial man requires instruction in business instruments, business technique, and business science. By business instruments I mean languages, for instance, shorthand, and typewriting; but I protest emphatically against languages, shorthand, and typewriting being regarded as the kernel of the University training for business. Languages, shorthand, and the other instruments of business are merely instruments in the hands of the business man—instruments by which he acquires knowledge. As Professor Ashley put it, "A business man is none the better off if he can make bad bargains in three languages instead of in one."

Business Technique—the method in which business is carried on—is not of the kernel, I think, of higher education for business. The method of the gardener is not the science of botany, and the method and order in the business office is not the science of commerce. Generally, I think, a man learns technique best from his actual experience. Technique changes so rapidly that there is always a fear that technique taught in educational institutions will become obsolete. I think America made a serious mistake when it established its toy counting-houses, in which little boys were taught to "bull" and "bear" stocks, and to win and lose fortunes in counters.

Then we come to Business Science. By business science I mean, firstly, the science of economics, as laid down in this country by Adam Smith, Ricardo, and Mill, and developed since—the science which sets out not to answer the question, "How is this or that done?" but, "Why does this or that happen?" It seems to me business science should be the central subject for study, and upon broad basis of business science should be built instruc-

tion in the science of statistics, and the study of special economic subjects, such as foreign trade, or particular industries, or the profession of banking, and so forth. Firstly, the broad basis of economics; and, secondly, the specialised study of the economic question, the broad question of business managing and policy which arises in the different businesses. A man should select his special study according to the business that he proposes entering afterwards. If he is going to be an accountant he would take as his special study accounting. All students in the Faculty of Commerce here are required to do some accounting, and in addition a certain amount of the general principles of commercial law. Students who propose to enter an industry should take also some technological subject or science, dyeing, for instance, or engineering. In addition every B.Com. should know something of languages; but his teaching in any language should be different from the teaching which the University man receives, if he takes modern languages as his subject. If he takes modern languages as his subject his aim is to deal with languages as the botanist deals with plant life, to study it as data in a scientific way. A business man does not require to study languages in a scientific way. He wants to use languages as instruments; to acquire languages so that he can read trade reports in French, German, and Spanish, and write a letter in those languages, and express himself clearly, if ungrammatically. It may, indeed, be said that languages are more necessary for the business man than for the doctor, but they are not a more essential part of his training. They are more important instruments, because in these days the world-wide commercial business man must study a good deal which is written only in the languages of other countries. Languages to the business man are what the surgeon's knife is to the surgeon. A knowledge of the surgeon's method of using the surgeon's knife is necessary for a man training to be a surgeon. It is not an essential part of his scientific grounding, however.

There are two questions, in conclusion, to which I should like to address myself. The first is the question of what place the business man should have as an instructor in a Faculty of Commerce. The second question is, At what time should the instruction be given? In my opinion it would be desirable to model the teaching in the Faculty of Commerce generally on the teaching which is given in the Faculty of Medicine or the Faculty of Law. In the Faculty of Law and the Faculty of Medicine the teaching is shared by scientific teachers, who have given the whole of their time to University instruction, and practising doctors and lawyers. If practicable, it would be desirable to have the same arrangement in the Faculty of Commerce. The teaching for the specialised subjects should be shared, as far as possible, by the man who has

had actual experience and the man who does his work in the study. That is the method pursued in the Faculty of Medicine and Law. It is the method we are trying to pursue, and with considerable success, I think, in the Faculty of Commerce. The course of banking is shared between one of the lecturers and a Manchester bank manager, who lectures on practical banking. The advantage of that method is twofold. The teacher of economics is prevented from being too abstract—he is kept in contact, through his practical colleagues, with the affairs of the world. The academic part of the teaching prevents the student from becoming too technical, and getting up his subject, so to speak, in the form of "tips." I need not say that by the study of abstract problems a man is given a more elastic mind, and ultimately is rendered more capable of dealing with the purely practical question.

In accounting we have special arrangements. In the opinion of the Faculty it is so important a subject that a general knowledge of accounting is made a compulsory subject. Everybody has to study it up to a certain stage. Accounting may also be taken as a special subject for the degree—there is a distinction between general subjects of study and special subjects. A man chooses his special subjects according to the profession he proposes to enter. As regards the special subject of accounting, we have decided, and, I think, very wisely, upon a short special course given by an accountant, leading up to an examination which will cover the practical experience which is obtained in an accountant's office. Nobody can acquire the requisite knowledge of the special subject of accountancy for the B.Com. degree unless he has done work in an accountant's office. Work done in an accountant's office is recognised as part of his work. In other words, the accountant's office is for this purpose to be recognised as a laboratory. That method may be applied later on to other subjects.

The other question is, When should the teaching be given? At Manchester (as in London) the teaching is given both in the day and in the evening, and both may terminate in the degree of B.Com. I do not think we need discuss here whether it is desirable that degrees should be given generally on evening work, but that it is desirable for the degree to be given on work done in the evening only by the Faculty of Commerce I feel not the slightest doubt. And observe that the student is engaged with economic problems in the office during the day, and so, in some way, at any rate, the office experience may be regarded as similar to the laboratory experience of the scientific student. We are giving the B.Com. on evening work as well as on day work. In Manchester the number of evening students is somewhat slightly in excess of the

number of day students. I hope that we shall have students of both kinds, and students of an intermediate kind, whom I particularly welcome. That is, students who come straight from school and give a full year, or two years, to their University work, and then complete their course in the evening after entering business, so as to make a good start with their general University subjects before entering upon business. As these elastic arrangements have been made here, it is somewhat beside the question to discuss whether it is desirable for a man to put off his entry into business to a later age than is usual. I know large numbers of business people think that the man who comes from school to the University, and then goes to business, is rather old to learn business habits; that he is in many cases unable to string himself up to the degree of attention to business detail that is required in the office. That is not my view. If the old University training had that effect it does not follow that the specialised University training will have that effect, but I think that upon this question I am perfectly unmoved and impenitent. I think that for very many people the best course to pursue is to go to the University and then enter business. Many cannot do it. Many do not think it is desirable to do it. There is a difference of opinion, so it is a question upon which one cannot dogmatise. But to meet the views of those who think that the entry into business should not be so long delayed, and the circumstances of others, we have in Manchester this elastic arrangement, by which a man may give a year or two to University work before entering business, or give only his time in an evening, or time got off from the office during the day, to the University work. All classes of students are treated without discrimination. The same regulations apply to all; all proceed equally to the degree.

In conclusion, let me say this, that as regards the arrangements for the M.Com. degree in Manchester, I think we have taken another desirable step in advance in imitation of the Ph. degree in Germany. A dissertation is required. There is no examination, except on the thesis, which may or may not be held. The student, after getting his B.Com., is supposed to prepare a dissertation—some specialised piece of work on something connected with business; some economic, accounting, or specialised business question—and on the originality and capacity shown in the preparation of such a dissertation the M.Com. will be awarded. (Applause.)

Mr. Alfred Nixon, F.C.A., in moving a vote of thanks to the lecturer, said it was just another instance of the devotion that he had given to the Faculty of Commerce. He remembered the time before Professor Chapman came to Manchester, how there was a crying need

for a better organised system of commercial education. They had got the right man in Professor Chapman. Few knew how he had devoted himself to the work. He could assure the Professor that nearly all accountant students were ambitious young men, and they would greatly like the B.Com. He thought it would be wise to consider whether the Preliminary Examination should not be taken as an equivalent for the Matriculation Examination of the University. That, he thought, would be a move in the right direction. One examination would do for both.

Mr. Alfred Wood, A.C.A., in seconding the vote of thanks as a member of the junior Society, said that the chief reason why so few members, comparatively, of their Society had taken up the course in the Faculty of Commerce was the fact that some of them had to be away on business for weeks together, and could not fulfil the obligations required for the degree. There was, however, greater interest shown by the students than would appear to be the case. He felt a personal debt of gratitude to the Professor in coming there that night to lecture to them, and also honoured by the fact that he was educated at the same school—the Manchester Grammar School—where the Professor commenced his distinguished career.

The lecturer having replied to the vote of thanks, proceeded to answer questions which had been addressed to him.

Mr. Brewis, F.C.A., said in this country we had a habit of taking advantage of other people's experiments, not only in educational matters, but in other things, and he for one was rather glad that the United States had been so bold as to experiment in the way the Professor indicated, and he did not think England would end by being second to either the United States or Germany.

Mr. Carter, F.C.A., said the chief difficulty that occurred to him in connection with the degree was that of time. It would be pretty well admitted, he thought, that those who became articled at seventeen years of age, and worked for their examination for five years, could not possibly at the same time enter into the subjects for the degree.

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### Personal.

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MESSRS. MAURICE JENKS, NYE & Co., Chartered Accountants, of 6 Old Jewry, London, E.C., announce that they have admitted into partnership Mr. JOHN EDWARD PERCIVAL, A.C.A., who has been in their employ for upwards of eleven years.

MR. S. WHITTA THORNTON, A.S.A.A., F.C.I.S., F.N.Z.A.A., Incorporated Accountant, has disposed of his practice in Nelson, N.Z., to Mr. W. S. HAMPSON,

A.N.Z.A.A., and entered into partnership with Messrs. BADHAM & BISS, of Christchurch and Wellington, N.Z. The style of the new firm in Christchurch will be BADHAM, BISS, THORNTON & Co.

MR. W. WINDER, Chartered Accountant, of 15 Walbrook, London, E.C., announces that the partnership hitherto existing between Mr. WENBORN and himself has been dissolved by mutual agreement. He has entered into a fresh partnership with Mr. A. E. DAVIS, which will be carried on from the old address under the style of DAVIS & WINDER.

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### Obituary.

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#### John Herbert Hackett, A.C.A.

WE regret to record the death of Mr. John Herbert Hackett, Chartered Accountant, which took place on the 10th inst. at Moseley. The deceased was a partner with Messrs. Howard Smith, Slocombe & Co., Chartered Accountants, Birmingham.

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### New Rules.

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#### Companies (Winding-up) Rules, 1903.

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NOTICE is hereby given that the following draft Rules have been prepared under the Companies (Winding-up) Act, 1890. Copies may be obtained on application to the Lord Chancellor's Office, House of Lords:—

(1) If the petitioner, or his solicitor, does not within the time prescribed by Rule 27 of the Companies (Winding-up) Rules, 1903, or within such extended time as the Registrar may allow, duly advertise the petition in the manner prescribed by the said rule, the appointment of the time and place at which the petition is to be heard shall be cancelled by the Registrar, and the petition shall be removed from the file in the Registrar's Chambers, unless the Judge or the Registrar shall otherwise direct.

This rule shall be read as one of the Companies (Winding-up) Rules, 1903, and shall be cited in the body of those Rules as Rule 27A.

(2) The following words shall be added to Rule 170 (2) of the Companies (Winding-up) Rules, 1903:—

Provided that the Official Receiver, when acting as liquidator, may, without taxation, pay and allow the costs and charges of any other person, other than a solicitor, employed by him, where such costs and charges are within the scale usually allowed by the Court and do not exceed

the sum of £2: provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

Lord Chancellor's Office,  
January 12 1906.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Feb. 16th, was 181, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 86; Deeds of Arrangement registered, 95. The respective numbers in the corresponding week of last year were: Bankruptcies, 106; Deeds of Arrangement, 98—total, 204; being a decrease of 23. The total number of commercial failures recorded during the 7 weeks of the present year is 1,169; the total number recorded in the corresponding 7 weeks of last year was 1,257, showing a decrease of 88.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Feb. 16th, was 193. The number in the corresponding week of last year was 207, showing a decrease of 14. The total number filed during the 7 weeks of the present year is 1,073; the total number filed in the corresponding 7 weeks of last year was 1,165, showing a decrease of 92.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Feb. 16th, amounted to £994,426, by way of addition to £2,925,504, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,154,368, showing a decrease of £159,942. The total amount registered during the 7 weeks of the present year was £8,828,996 (in addition to the issues in previous years by the same companies), as compared with £14,615,104 for the corresponding 7 weeks in 1905, showing a decrease of £5,786,108.

ACCOUNTANTS' DINNER.—The annual dinner of the staff of Messrs. E. Layton Bennett & Co. took place at the Holborn Restaurant on Monday evening, the 19th inst. The chair was occupied by Mr. E. Layton Bennett, and an admirable programme was provided, which was thoroughly appreciated by the company present, numbering 35.

## The Profession in Scotland.

### Obituary.

The death is announced as having taken place at London, on the 13th inst., of Mr. George Fraser Clark, C.A. Mr. Clark became a member of the Edinburgh Society of Accountants in 1898.

### Institute of Accountants and Actuaries in Glasgow.

The following are extracts from the Annual Report of this Society:—

The Council beg to submit their Annual Report.

The membership, which at the beginning of the year stood at 442, had increased to 479 at 31st December 1905. The following members died during the year:—viz., Mr. Louson Walker (Greenock) and Mr. Archibald Grierson (London).

The number of entrants for the Preliminary Examination was 13 greater than in 1904; while, for the Intermediate, the number was four greater. The Final brought forward 29 candidates for the whole examination, and 38 for one division only, as compared with 30 and 38 respectively in 1904, being a decrease of one in the total entry. The two following candidates connected with the Institute passed with distinction:—Mr. Robert Kyle Thomson, M.A., and Mr. William Ainslie Walton. In accordance with a resolution of the Council each of these gentlemen received a prize of £5 5s., which, in each case, was taken partially in books. Twenty-four candidates, having produced the necessary leaving certificates, were exempted from the Preliminary Examination, as compared with 12 in 1904.

The tutorial classes, conducted under the auspices of the Institute, have been vigorously carried on during the Spring and Autumn Sessions. The Council would take this opportunity of reminding members of the importance of these classes, and of the desirability of their calling the attention of their apprentices to the advantages to be gained by attendance thereat.

The question of the restriction of the number of apprentices to two per member, which was recommended by a majority of the Joint Committee of the Chartered Accountants of the United Kingdom, has received the attention of the Council, but they have come to the conclusion that it would be inexpedient to impose such a restriction.



**BALANCE SHEET** as at 31st December 1905.

[illegible]

**T. A. CRAIG, C.A., Treasurer.**

Glasgow, 11th January 1906.—Examined and found correct.

JOHN WILSON, C.A., Auditor.

value has been obtained. The work is one which worthily represents the profession, and permanently marks an important stage in its development.

On the occasion of the jubilee, Mr. Jackson presented the Institute with a handsome badge of office, to be worn by the President for the time being. The badge is of 18-carat gold, richly chased and engraved, having on the one side the seal of the Institute, and on the other the names of the Past-Presidents.

The Library Committee have devoted a great deal of time during the year to the interests of the library, and a Report by them is submitted herewith for the information of the members. The preparation of the new catalogue has proved a more arduous task than was at first anticipated. The portion of it to the letter "H" is now completed, and of the remainder proofs are being dealt with as rapidly as possible.

A short course of lectures was delivered in the early part of the year, under the joint auspices of the Bankers' Institute and the Chartered bodies—two lectures by Mr. Allan McNeil, solicitor, Bank of Scotland, Edinburgh, on "Bills of Exchange," and two by Mr. Hugh P. Macmillan, advocate, Edinburgh, on the "Law of Partnership." The lectures were delivered in Edinburgh, Glasgow, and Dundee, and were well attended.

The proposal for the formation of a Benevolent Fund has received the most careful consideration of the Council, and in accordance with a report submitted by a Sub-Committee which went very fully into the whole matter, they have agreed to recommend that a Benevolent Fund be established for the purpose of granting aid to decayed and infirm members, or to the widows and dependents of deceased members; that the fund be maintained by voluntary annual subscriptions, with the accession of donations

and legacies, and that it be kept and administered quite apart from the Institute, with separate office-bearers.

The question of the preparation of a table of fees is engaging the attention of the Council, and they hope to submit a proposal to the members before long.

Abstracts of the Treasurer's Accounts are appended hereto, showing a surplus income for the year of £923 18s. 11d., which has been added to the capital.

On 24th November 1905 the Secretary, Mr. Alexander Sloan, was presented with his portrait, painted in oils by Mr. Alexander Roche, R.S.A., Edinburgh, and subscribed for by members of the Institute, as a token of respect and esteem. A replica of the portrait is to be presented to the Institute and hung in the hall.

Mr. Jackson, having occupied the office of President for three years, retires at this time, in accordance with the usual custom, and the Council recommend the election of Mr. John Mann, Senr., as his successor.

The members of Council who fall to retire at this time are Messrs. George A. Cadell, Andrew S. M'Clelland, and D. Johnstone Smith. In terms of the constitution they are not eligible for re-election until the expiry of another year. The vacancies caused by the retirement of these gentlemen and of that caused by the election of Mr. Mann to the Presidency fall to be filled up in terms of the rules.

The Council recommend the election of the following gentlemen to fill the vacancies:—viz., Messrs. Thomas Jackson, Robert Carswell, Robert M. Maclay, and Alexander D. Deas.

In terms of the joint agreement, five members fall to be elected at the annual general meeting to represent the Institute on the General Examining Board. The present representatives, in addition to the President *ex-officio*, are Messrs. Ninian Glen, M.A., F.F.A., Joseph Patrick, M.A., Alexander Moore, Junr., John Mann, Junr., M.A., and Alexander Sloan. They are all eligible for re-election.

Three members also fall to be elected at the annual general meeting to represent the Institute on the Joint Committee of the English, Scottish, and Irish Chartered bodies. The present representatives are Messrs. Thomas Jackson, John Annan, and Alexander Sloan. The Council recommend the re-election of these gentlemen. The Joint Committee met in London on 21st June 1905.

By order of the Council,

ALEXANDER SLOAN, C.A., *Secretary*.

Glasgow, 16th January 1906.

#### *Report by the Library Committee.*

During the year the Committee have selected and added 385 volumes to the library, and 96 volumes have been presented to the library by the following members, Societies, and others:—Messrs. A. G. Platt, C.P.A. (San Francisco), William H. Hill, LL.D., James Lauder, F.R.S.L., Robert D. McEwan, James J. MacLehose, M.A., David S.

Salmond, James Nicol, A. K. Chalmers, M.D., Caledonian Insurance Company, Glasgow Athenæum, Institute of Bankers in Scotland, Old Glasgow Club, Royal Philosophical Society of Glasgow, and the following members:—Messrs. Bannatyne, Herbert Brown, Cadell, Clapperton, and Sloan, for whose kindness the Committee desire to record their thanks.

The Committee have during the year added to the library, in addition to works on the professional subjects of accounting and law, a considerable number of books on banking, finance, economics, and works dealing with social problems, and these sections may be regarded as now very fully represented. They have, besides, added a number of works designed to aid the apprentices and younger members in their courses of study. A few books of general interest and a number of books on history and biography have also been bought, and these have been largely taken advantage of, as will be seen from the statistics given below.

The record of the volumes taken out during the year has been very gratifying to the Committee, as the number has been 2,262, or no less than 845 more than in the previous year. The various classes comprised in the total are as follows:—

	1904	1905
Bookkeeping, Accounting, and Auditing	506	911
Actuarial Science and Insurance ...	29	51
Law, including Income-tax ...	594	730
Economics, Banking, and Sociology ...	77	189
History, Travel, and Geography ...	25	100
Biography ...	38	141
General Literature ...	41	24
Miscellaneous ...	107	116
	<u>1,417</u>	<u>2,262</u>

The increased use of the library has been more marked in the second half of the year than in the earlier period, showing that the benefits of the library are becoming better appreciated by the members and their apprentices.

The new catalogue is in course of preparation, and the Committee are pressing on with its completion. The portion to the letter "H" has been completed, and now lies on the library table, and further instalments will be added from time to time. The Committee are confident that when the catalogue is out of the printer's hands it will bring home to the members and apprentices a better knowledge of the very large amount of valuable literature at their command on professional subjects and on matters of daily interest and utility. It has been designed to facilitate study and ready reference on professional subjects rather than on general reading, and the index system adopted, though laborious to prepare, is eminently suited to that end. As instances may be cited such subjects as

Arbitration and Depreciation. Under the old style of catalogue there would have been only six references under Arbitration and three under Depreciation; under the new one the references number 27 and 144 respectively. It may also be mentioned that in the previous catalogue of 1889 Bookkeeping was represented by 13 entries, it is now represented by 101 entries; Companies had then 12 entries, now 229; Auditing had two entries, now 157; and many other instances might be quoted. The differences in the figures represent to some extent the increased number of books now in the library, but chiefly the improved method of giving references to the contents of the works.

The cost during the year for new books (apart from periodicals and the cost of re-binding) has been £168 os. 3d., against £201 gs. 5d. in the previous year.

The Committee beg to remind the members and apprentices that a Suggestion Book lies in the library, and it would be of great assistance to the Committee if members and apprentices would note any books or new editions which they would suggest for addition to the library.

On behalf of the Committee,

T. A. CRAIG, *Convener.*

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### **Society of Accountants in Edinburgh.**

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#### **PUBLIC FINANCE.**

The first of a course of four lectures on public finance was delivered on the 13th inst. in the hall at 27 Queen Street, Edinburgh, by Mr. J. Shield Nicholson, Professor of Political Economy, Edinburgh University, in connection with the Institute of Bankers in Scotland and the Society of Accountants. Sir George Anderson, Treasurer of the Bank of Scotland, presided.

The Chairman said he thought the lecturer was to be congratulated on his choice of a subject. There was no subject which had been more prominently before the minds of thinking people during the past year or two than that of public finance. It had been forced upon their attention by the rapid and enormous increase in the expenditure of the country, and by the excessive borrowing of corporations and other public bodies throughout the country. On pretty well every platform during the recent General Election this question had been referred to; and while nearly every candidate had been ready to promise to do all in his power to reduce this apparently extravagant expenditure, when the question had been put to him how he would bring about this reduction, his answers had become rather vague and uncertain. He thought there was no one better fitted than Professor Nicholson to enlighten them on that important and intricate subject. He had devoted a good many years of his life to questions of the same kind. With regard to municipal trading,

which was to form the subject of the fourth lecture, the Chairman said, while its advocates told them it was only yet in its infancy, bankers thought that in one particular department at least municipal trading had reached a considerable growth. He referred to the municipalities treading on their toes in obtaining deposits from the public. In that, corporations and other public bodies had developed an enormous amount of business. During recent years it had been known to Scotland, but lately it had reached dimensions they would not have thought possible a few years ago. It had also spread to England, and their English friends did not like it. They had been kicking against it for some little time. Whether they would be able to resist it better than in Scotland remained to be seen. They could only hope more prosperous times would bring increased wealth to the country, and that out of that the resources of the banks would be replenished.

Professor Nicholson thereafter proceeded with his lecture, which was introductory to the subject. Public finance, he said, dealt with the expenditure and revenue of the State in performing the functions of government, central and local. With the progress of society these functions increased in number and complexity, and on both sides the expense also increased. In any action on the part of the State the expense was only one of the elements to be taken into account, but it was always of importance, and it was often the decisive consideration. Under modern conditions the expense of any one important function of the State might be increased indefinitely (e.g., the expense of defence), and we had always to take account of the competition of different services for a limited amount of public revenue. The term "science" as applied to public finance implied that there were certain principles of revenue and expenditure, and that no case could be settled simply on its own merits. Public expenditure might be classified according to the revenue that might be derived by the State for the service rendered. In some cases there was no return, and even an indirect loss, as in a lax system of poor relief; and at the other extreme there might be not only a full return, but, especially with the aid of a State monopoly, an exceptional profit. The principal business of the State was to perform functions that did not yield a corresponding revenue, and in general the expense must be met by the levy of compulsory taxes and not out of the profits of the particular service. Even in local government, the principle of payment for services rendered found only a partial application. A broad historical survey showed that the old idea that each particular source of expense should be met by a corresponding particular tax had been more and more abandoned in the course of progress, and former sources of profit to the State had been surrendered. The modern idea was that the State raised its whole revenue



in the best way it could, and determined the distribution according to the estimate of the public requirements. If we put on one side fees or profits that were still obtained from some services, it was clear that the revenue of the State must be obtained from taxation or from borrowings that were in effect anticipations of future revenue from taxation. In national expenditure the greater part must be met from taxation, and the growth of local rates for general purposes showed the same tendency. The expenditure on the Navy and Army in 1884-85, compared with that in 1904-5, showed a rise from about 30 millions to over 66 millions, and of this rise the last decade was accountable for 31 millions out of the 36 millions. Apart from local rates for education, which in some places reached more than 3s. in the £, the Exchequer contributed over 14½ millions for education, which was three millions more than was spent on the Navy twenty years ago. And yet the demands for defence and education continually increased. It used to be said that the expenditure must determine the revenue, and not the converse, as in the case of a private person, but in the face of these representative facts this could no longer be maintained, and some limit must be assigned to the increase of compulsory taxation. The compulsory character of taxation led on the one side to attempts to disguise the real burdens of the taxes, and, on the other, to attempts to shift or evade the burdens, and these two endeavours largely accounted for the complexity of the present system. The saying that an old tax was no tax implied that the shifting had been completed, and that the people concerned were used to the burden; but the consequence was that taxes were retained long after the economical circumstances that justified them had disappeared. All sorts of legal fictions were resorted to in order to fit the old taxes to the new conditions. The rating of railways in England was based on what a hypothetical tenant would be willing to pay by way of rent, just as if acres of railways could be valued like acres of agricultural land, and stations like farm steadings. A simplification of taxation, especially of local taxation, was much needed. Coincident with the increase of taxation there had been an increase in public debts, Imperial and local. At the end of the nineteenth century the national debts of the world were over 7,000 millions, and were growing at the rate of 1,000 millions a decade. The local debts of the United Kingdom amounted thirty years ago to less than £4 per head of population, and now they exceeded £11 per head, whilst the aggregate amount was about 500 millions; and although it was said most of this debt was for productive purposes, and was repayable in a term of years, the fact remained that the aggregate increased, and the rates also increased.

### Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	4%

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## Leading Articles.

### The Official Audit of Electric Lighting Accounts.

THE demands upon our space have prevented us from dealing earlier with the letter signed "Perplexed," which appeared in our Correspondence columns of the 3rd ult. Our correspondent inquires whether the Board of Trade auditor appointed under Section 6 of the Schedule of the Electric Lighting Clauses Act, 1899, acts in the same manner as provided by the Board of Trade in forms of provisional orders issued by it under the Electric Lighting Acts of 1882 and 1888, and more particularly whether the Board still adheres to the views mentioned on p. 28 of the eighth edition of PIXLEY'S "Duties of Auditors." Our correspondent goes on to inquire whether, if the Board of Trade auditor has now more extended powers, it is necessary for an electric light

company registered under the Companies Acts to comply with Section 21 of the Companies Act, 1900, by appointing another auditor, and further, what would be the position of affairs if there was a conflict of opinion between the two auditors. So far as we are aware, the Board of Trade has not modified the views stated in its letter to the Institute of Chartered Accountants of the 18th December 1895, when it was stated that the Board held it to be outside the province of the official auditor to act as auditor on behalf of the shareholders. And it is, we think, very desirable that this attitude should be maintained, for if the official auditor were to be allowed to also act as the auditor of the company, there can be little doubt that, owing to false ideas of economy, he would be so appointed, in some cases at least, greatly to the detriment of the interests of the company—for unquestionably the two sets of duties are quite different in character and are prescribed with different objects in view.

The sole object of the official audit is to see that consumers are not overcharged; and in practice the effect of such an audit is naturally to encourage, rather than to discourage, the capitalisation of expenditure, as by that means profits are increased, and as profits increase the charge for the service naturally tends to be reduced. Neither the Board of Trade nor its auditor, owes any duty to the company or its shareholders, and in consequence neither has any occasion to discourage directors from injudiciously or even improperly capitalising expenditure which ought in fairness to be charged against revenue. The electric lighting official audit is thus—like all other official audits with which we are acquainted—no audit at all in the ordinary

acceptation of the term, and the employment of the term is thus most misleading.

As to whether the appointment of the Board of Trade auditor absolves the company from complying with Section 21 of the Companies Act, 1900, we can only say that the former cannot in any sense be seriously regarded as compliance with the terms of the latter. It is unfortunately true that the Board of Trade official is called an auditor, but the mere fact that some outside body has appointed someone to make an inquiry into certain aspects of the company's affairs for a particular purpose does not absolve every such company incorporated under the Companies Acts from appointing at each general meeting an auditor or auditors, to hold office until the next annual general meeting. If the company omits to make such an appointment, the Board of Trade may, on the application of any member of the company, appoint an auditor for the current year. A question of some interest arises, perhaps, as to whether the Board of Trade auditor is an officer of the company, and as such is not capable of being appointed auditor (Section 21 (3)). The point is, however, merely of academic interest, in that the Board of Trade would not in any event appoint its own official as auditor under the Companies Acts. If it wished to do so, however, we think it unlikely in the extreme that the Courts would hold that any Board of Trade official could be an officer of a company, and consequently, if the departmental rules so admitted, the appointments might be combined if the company in general meeting neglected to appoint its own auditor. That the combination would be detrimental to the interests of the company is, however, sufficiently evident by what has been already stated.

As to what is to happen in the event of a conflict of opinion between the two auditors, and with whom rests the ultimate decision upon the point in dispute, it may be pointed out that the jurisdiction of the two auditors is as distinct as are their duties. The Board of Trade would naturally act upon the report of its own auditor, and the company, if it were wise, would support the auditor appointed by it. Acting upon the report of the official auditor, the Board of Trade might make requisitions upon the company which the latter did not feel justified in complying with. If so, the support of its auditor might strengthen the company in opposition to the Board of Trade's requirements, but for that purpose its auditor's report would be unofficial, and by no means conclusive evidence of the facts. The advantage of the independent professional audit would be, of course, that the company would be in possession of the opinion of an independent expert acting on its behalf, and might thus have its attention drawn to the unreasonableness of certain official requirements which otherwise would very possibly have been assumed to be beyond challenge. The two auditors, however, pursue their inquiries independently, and report to different bodies upon different subjects, so that in the ordinary sense of the term there could hardly be said to be any conflict between their reports upon which it was necessary for anyone to specifically adjudicate.

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#### **Showell's Brewery Company, Lim.**

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SEPARATE meetings of the ordinary, preference, and guaranteed, shareholders in Showell's Brewery Company, Lim., were held on the 16th ult. to again consider the subject of

the proposed reduction of capital for the purpose of wiping off the existing deficiency of £293,746, which arose under circumstances that have already been reported in these columns. At each meeting a resolution was passed accepting the principle of a reduction of capital, and it was decided that in order to ascertain to what extent such deficiency should be borne amongst each class of shareholders a representative should be appointed by each class to confer with Mr. A. H. GIBSON, F.C.A., the auditor of the company, with a view to agreeing upon the deficiency to be borne by each class. Sir JOHN G. CRAGGS, F.C.A., was appointed the representative of the preference shareholders, Mr. H. W. KIRBY, F.C.A., the representative of the guaranteed shareholders, and Mr. F. S. GOODWIN the representative of the ordinary shareholders. Shareholders of each class were also appointed as a committee to confer with their respective representatives.

It may be remembered that up to the present the shareholders have been unable to agree as to how the deficiency should be borne among them, and under these circumstances the reference to an informal tribunal of experts is undoubtedly the course most likely to result in something definite being eventually accomplished. So far as we are aware it represents practically a new departure in company practice, but it is one that might well, and doubtless will in the future, be further extended in cases where the interests of different classes of shareholders clash, and where it is hardly reasonable to expect shareholders of any class to arrive unaided at an altogether fair and impartial determination.

It may be pointed out, however, that this reference to experts is not in the nature of an

arbitration, for even in the event of their agreeing upon a scheme for the reduction of the company's capital, the different classes of shareholders will not be bound by such agreement. It is indeed, we think, somewhat of an open question whether it would be possible to substitute the finding of an arbitration tribunal for a special resolution of the company. Certainly it would tax the ingenuity of company lawyers to draft the wording of resolutions purporting to refer the matter in dispute to arbitration in such terms that their award, when published, became a special resolution of the company. While entirely favouring the general principle that so highly technical a question as the equitable apportionment of a loss of capital between different classes of shareholders is best decided by impartial experts, we are hardly prepared to go so far as to say that it would be in the interests of company management for shareholders to abrogate their rights to vote for or against any particular proposal that may come before them. At the same time there is little reason to doubt that if the four experts are able to agree, their recommendations will be accepted by the required majority of each class of shareholders. All are agreed as to the expediency of a reduction of capital, and no better means of arriving at a scheme that is likely to be equally acceptable to the various conflicting interests could well be devised.

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#### The Professional Audit of Public Companies.

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ATTENTION has been drawn of late, in the columns of *The Times* and elsewhere, to the fact that certain well-known and important companies are still run upon such old-fashioned

lines that they deny themselves the advantages and safeguards of a professional audit. In this connection the Marine and General Mutual Life Assurance Society and the London and County Banking Company, Lim., have been especially mentioned, but it must not be supposed that they stand alone. During the past few years it is true that the majority of insurance companies have, as opportunity offered, replaced lay auditors by Chartered Accountants. In the case of joint-stock banks certainly the professional audit is the rule rather than the exception, but even here, and *a fortiori* in the case of private banks, there is still much to be done before the position of affairs can be regarded as altogether satisfactory.

In connection with societies registered under Acts other than the Companies Acts, the position is, however, undoubtedly worse. A comparatively large number of gas and water companies are audited by laymen, and in many cases the private Act still has the old-fashioned provision that the auditor must be a shareholder. In the case of railways, again, professional auditors are in the minority; and, as we pointed out last week, the London and North-Western Railway Company has let slip the opportunity afforded by the recent retirement of Sir EDWARD LAWRENCE after fifty-five years' service. Incidentally it may be pointed out that even the advantages of long experience can be over-emphasised, and that, save for purely consultative purposes, the most able auditors will certainly have performed their best work at a far earlier date.

To return to the subject of lay audits, it may be remembered that for many years the Birkbeck Building Society's audit was more or less a family affair, and it was only after our

repeatedly calling attention to the matter that a well-known firm of Chartered Accountants was asked to conduct an impartial audit, and even now their procedure is limited to a verification of assets. The Civil Service Supply Association, Lim., with a turnover of nearly a million and three-quarters per annum, is audited by laymen, and the list might, if necessary, be extended almost indefinitely.

The truth of the matter is that the enormous advantages to be derived from an efficient system of financial control are but rarely appreciated at their proper value outside manufacturing and trading circles. Bankers, retired officers, Government officials, and others of no business experience, who form a majority on the board of many undertakings, are, as a rule, either indifferent to the matter or somewhat opposed to what they regard as a vexatious innovation. If the public were to learn to regard the absence of professional auditors as evidence of senility or incapacity on the part of their directors, it would not be long before the whole question was viewed in a better perspective. We do not, of course, say that in exceptional cases there may not be excellent results produced from an audit conducted by one who has never received any training for the position, and regards it rather in the light of a hobby than as a profession; but it stands to reason that such cases are largely exceptional, and that as time goes on, and the old generation of auditors dies off, the idea of expecting good results under such circumstances becomes more and more unreasonable. Even supposing that fifty or sixty years ago it was possible to find lay auditors as competent as any professional accountants, it is important to bear in mind that whereas the latter class have greatly increased in skill and experience

during the intervening period, the former in the nature of things would be practically incapable of improvement; so that at the present time if it were desired to appoint a competent auditor and to appoint someone other than a professional accountant, it would be extremely difficult, if not absolutely impossible, to find a suitable candidate for the post. It is, however, probably unnecessary to labour this point further, inasmuch as it must, we think, be admitted that an adherence to the lay audit can in all cases be regarded only as evidence either of extreme and undesirable conservatism, or else of an inability to appreciate the proper business aspects of the position.

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#### Specific Mortgages and Floating Charges.

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OUR attention has been called to the decision given by the Irish Court of Appeal on the 15th ult., in *Re The Dublin City Distillery Co., Lim.*, which deals with the important question of the respective rights of debenture-holders and of mortgagees claiming a specific charge on certain assets. This decision is, of course, not a precedent in the English Courts, and for that reason we do not think it worth while to reproduce it in full in our Law Reports. As, however, the statute law upon the subject is identical in the two countries, the finding of the Irish Court of Appeal can doubtless be safely relied upon for all practical purposes.

Shortly stated, the point that the Court had to decide was as to the priority of the claims between the debenture-holders of the Dublin City Distillery Co., Lim., and the Hibernian Bank, which held warrants to whisky manufactured by the Distillery to secure advances

made by the Bank to it amounting to some £13,771. The Bank sought to enforce its rights in March of last year, but there being then a debenture-holders' action pending, and a receiver appointed, the Master of the Rolls ordered a stay of the Bank's action, and that the rights under it be dealt with under an order made for the taking of accounts as to the claims of encumbrancers and creditors of the company. The matter was then dealt with as an inquiry in the receivership action. There were, it appears, two issues of debentures: the first for £35,000, as security for which the company had demised all its freehold and leasehold property to trustees, upon trust to permit the company to hold and enjoy the same and to carry on therein and therewith the business or businesses authorised by the memorandum of association of the company until default should be made in payment of principal moneys due or the interest in respect thereof should be three months in arrear, or a distress or execution levied against the property of the company, or until it should be proposed to wind up the company. Subsequently the second series of debentures were issued, amounting to £25,000, in the same form as the first. The Hibernian Bank was the bank of the company, and as such made advances to it against pledges of whisky warrants. And default having been made, the Bank claimed that these pledges for advances were paramount to the claim of the debenture-holders, and that their security was not a mortgage or a charge of such a character as to give the debenture-holders a prior claim; that the advances, being for the purchase of grain with which the whisky was made, did not become in law or equity *puisne* to them; and that they having only a floating charge, the

company was not prevented from obtaining such money in the ordinary course of business. An attempt was made to distinguish this from *Bushmill's* case, but Mr. Justice BARTON attached no value to the distinction, and gave it as his opinion that, inasmuch as the whisky was given to secure an advance, it came within the prohibition as to "nothing herein shall create a charge, &c.," in front of the debentures. As to the use the money was put to, he could not infer what had been done with it, as it might have been applied for any or many purposes. There remained, his Lordship stated, the question of notice to the Bank of the existence of the debenture-holders' claim, and here again he decided against the plaintiffs. The Bank appealed, and, as already stated, the appeal was heard before the Lord Chancellor of Ireland, Lord Justice FITZGIBBON, and Lord Justice HOLMES, a few weeks since.

The Court dismissed the appeal with costs. Their Lordships held that the transaction by which the whisky became pledged to the Bank was a transfer of property by handing over the warrants as security for a debt in substance and in equity a charge. This was prohibited by the conditions of the debenture issues in words which were undistinguishable from those used in *Bushmill's* case; while on the question of notice, as a matter of fact, the appellants were holders of some of these very debentures, and thus could not be heard to say that they had no notice that the company was incompetent to give them a charge on certain of its assets in priority to debenture-holders.

This decision is of great interest inasmuch as under all normal circumstances a specific charge ranks in front of a floating charge, even although the latter may be of anterior date.

The explanation here, of course, was that it was *ultra vires* the company to grant such specific charge, and the appellant Bank was held to have been aware of the fact at the time that the charge was created. The argument put forward upon the Bank's behalf, that such a pledge is, in fact, something different to a charge, was doubtless ingenious, but could hardly have been seriously expected to succeed.

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### Some Legal Terms.

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#### Law and Equity.

BY OUR LEGAL CONTRIBUTOR.

IT has been my experience, as doubtlessly that of others, in commencing a course of law lectures with Accountant Students, to find that even the most attentive of them with all the goodwill in the world get perplexed and disheartened by the technical language in which the legal ideas sought to be conveyed to their minds must of necessity be clothed. Inability to follow the meaning of a discourse inevitably leads to lack of interest in the subject, and more certainly will this be so where, as in the case of law, the subject is approached in many instances with an instinctive distaste.

In grappling with this initial difficulty two courses are open to the lecturer—he may either devote his opening lecture or lectures to clearing out of the way once for all these difficulties of terminology, or deal with them from time to time as they arise. To my mind the latter course is to be avoided, seeing that it implies frequent—at all events in the earlier lectures—and in some cases long digressions from the main subject, whereby the student is as much confused and puzzled as by the obscurity of the terms themselves.

This, then, is the *raison d'être* of this and the following lectures, in which I shall endeavour to elucidate the meaning of several fundamental and frequently recurring legal terms in as simple and

practical a manner as possible, and without in any way considering the legal relations underlying them or entering upon the sphere of jurisprudence. I purpose to commence with those two celebrated terms "Law" and "Equity," without some appreciation of the meaning of which the veriest tyro in "Stevens" must fail to understand what he is reading about.

Now, a well-known characteristic of legal systems in their earliest stages is their want of elasticity, or their inability to adapt themselves to the advancing social necessities and opinions of the society in which they prevail. In order to overcome this difficulty and to bring things into harmony various expedients have been adopted. One of the most notable of these, common both to our own system and that of the Romans, is "Equity," or a body of rules existing by the side of the original law, founded on distinct principles, and claiming incidentally to supersede the older law on the strength of an intrinsic ethical superiority.

The earliest body of English law, based on immemorial custom and known as the "Common Law," and the Roman "Jus Civile" or original law of the city of Rome, both exhibited in a very marked degree that want of elasticity above referred to; the letter of the law was everything, the spirit quite a minor consideration. In neither of these systems was it permissible to depart one jot or one tittle from form and precedent, and as they were necessarily meagre, it followed that in many instances wrongs went practically, and in others entirely, unremedied. In both cases, however, alongside of the strict unbending ancient code, and with a view to correcting and supplementing its deficiencies, there arose another body of legal principles, known in Rome as the "Jus Prætorium," or law as administered under the edict of the Prætors; in England as "Equity," or the law as laid down in the judicial decisions of the Court of Chancery.

For instance, under the Roman "Jus Civile," and equally under the English "Common Law," a person who had entered into a formal contract could



only be released therefrom—otherwise than by performance—by a contract of a like nature; whereas the Prætors in the one case and the Chancellor in the other, as administering “Equity” would recognise and give effect to any kind of discharge of a legal nature.

To make my meaning clearer, so far as English Equity is concerned, I will refer to a case which occurred as far back as the reign of Henry VI. There the plaintiff had given his bond—which is, of course, a contract under seal—in payment of certain debts which he had purchased. Upon finding, however, that he could not bring an action in his own name to recover these debts, he applied to the Lord Chancellor to be released from his bond, on the ground that the consideration for which he had given it—viz., the benefit to be derived from the collection of the debts—had failed, and obtained the relief he sought. An action was, however, brought on the bond in a Court of Common Law by the person in whose favour it had been made, and he in his turn was successful there, notwithstanding what had been done in Chancery. The reason being that in the eyes of the Common Law, the bond, being a contract under seal, had not been discharged in the only way recognised by it—viz., another contract of like nature. The Chancellor, however, was not to be denied, and although he could not openly reverse the Common Law Court’s decision, obtained the same object by forbidding by means of an “Injunction” or order of the Court the successful plaintiff to take advantage of the Common Law judgment in his favour. This interference on the part of the Court of Chancery was, as may be imagined, in no wise tamely submitted to by the Courts of Common Law and led to frequent collisions between them, culminating in a battle royal, in the days of James I., between Lord Chancellor Ellesmere and Lord Chief Justice Coke. In the case which was the basis of this dispute the verdict in the Common Law Court had been obtained by a gross fraud—viz., by decoying away a necessary witness of the defendant and making the Judge believe that he was dying. During the trial this witness was taken

to an adjoining tavern and a bottle of sack ordered for him. When he had put this to his mouth the fabricator of the trick returned to Court, and arrived there at the moment the witness was called. The Judge was asked to wait a few minutes, but “the cunning knave,” to quote Lord Campbell, swore that delay would be useless, as he had just left the witness in such a state that if he were to continue in it a quarter of an hour longer he would be a dead man. The plaintiff by means of this ruse obtained judgment in his favour, but the Chancellor, on hearing of this travesty of justice, issued his injunction against it, to which the Lord Chief Justice replied by directing criminal proceedings to be taken against everybody concerned in the case. The matter was then referred to a number of learned lawyers, who subsequently reported in favour of the Chancellor’s action, a view in which the King, though for other reasons, concurred; and since that date, although from time to time the question of equitable jurisdiction was mooted, it was exercised without controversy or interruption. It is, of course, impossible in such a sketch as the present to investigate or even to enumerate all the various directions in which Equity exerted its influence on the Common Law, a few, however, of the more important may be glanced at. The doctrine of “Specific Performance” was entirely unknown to the Common Law, and if a contract was broken the only remedy was damages. Such a remedy was, however, often clearly insufficient and inequitable, and particularly so in cases where land was concerned. The Chancery Courts, therefore, were in the habit of decreeing the specific performance of such contracts, *i.e.*, they would compel the vendor to convey the very land which he had contracted to sell to the purchaser, and not allow him to cry off on the payment of damages. Again, by the Statute of Frauds, certain contracts are unenforceable at law unless there is some note or memo. thereof in writing signed by the party to be charged; and unless there were some such note or memo. a party to such a contract, even though he might have more or less substantially

performed his part of the bargain, would have had no Common Law remedy against the other party thereto should he have refused to be bound by it. This again was clearly inequitable, and so the Chancery Court invented the doctrine of "Part Performance," in accordance with which they held that under such circumstances it was no answer for a party to a contract to set up by way of defence the want of a written note or memo.

It was, however, in the region of "Trusts" and "Mortgages" that the Court of Chancery most made its influence felt. Trusts we may for all practical purposes say were quite unknown to the common lawyers, and the vast and intricate mass of law now existing on that subject was slowly evolved by the Chancery Courts. Mortgages, it is true, were not unknown to the Common Law, but it consistently took a very harsh and narrow view of such transactions, and so gave Equity the loophole which it was ever ready to seize upon. In the eye of the Common Law, if the mortgage money were not paid exactly as and when provided by the deed the land became there and then the property of the mortgagee, and the mortgagor lost it for ever. The Chancery Courts, however, regarded the land merely as a security for a debt, and would always allow the mortgagor, notwithstanding the agreed date for repayment was passed, to redeem the land on the payment of the principal, costs, and interest, provided such payment was made within a reasonable time.

Although equitable rights and remedies were originally created and solely administered by the Courts of Chancery, yet this is now no longer the case as regards their *administration*. By the Judicature Act of 1873 it was enacted that in every civil cause or matter law and equity should be administered concurrently, and that where there was any conflict or variance between the rules of Equity and Common Law the rules of the former should prevail. In other words, a fusion of Common Law and Equity so far as their *administration* was concerned was brought about. At the same time, however, certain classes of actions, including

*inter alia* those for the administration of the estates of deceased persons, dissolution of partnership, redemption and foreclosure of mortgages, execution of trusts, &c., were for reasons of convenience assigned to the Chancery Division of the High Court of Justice, which now represents the old Courts of Chancery.

Notwithstanding this fusion of their administration, the difference in their nature, due to their origin, between legal and equitable rights and remedies continues to exist, and it is still of vital importance for the lawyer to understand wherein that difference lies, and to be able to recognise and differentiate between them when they arise. The Accountant Student fortunately has no need of such an intimate knowledge, and it is hoped that what has been said will be sufficient to enable him to understand in the course of his reading wherein lies the fundamental distinction between such terms as Legal and Equitable Assignments, Mortgages, Executions, &c.

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### Weekly Notes.

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**The Investment of Reserve Funds.** At the ninth annual general meeting of Bovril, Lim., which was held on the 9th ult., the chairman definitely stated that he would not give any undertaking whatever as to how the board would invest the company's Reserve Fund from time to time. It would, he said, use the Reserve Fund in the best interests of the company as a whole, and that was as much as could be got out of him. That in many cases the best method of dealing with a Reserve Fund is to invest it in gilt-edged securities can hardly be gainsaid, but it must be obvious to those who are prepared to reason the matter out that the only conceivable advantage of acquiring such readily realisable assets is that in case of need the moneys derived from their realisation may be applied in such manner as may be desirable in the interests of the company. If a company ties its own hands by requiring its Reserve Fund to be invested in Consols, or other high-class securities, it naturally sacrifices the chances of using that Reserve Fund upon occasions for the very purposes for which presumably it was created. Of course, while no other use can be found for them, Reserve Funds should invariably be

invested, but it is only until such a use can be discovered that the need for, or even the desirability of, such investments exists.

**Book Post Rates  
and American  
Competition.**

A contemporary points out, not of course for the first time, that British and Colonial business houses are unduly handicapped in their competition with the United States by post office rates. Letters are, of course, cheap enough, and the same remark applies to such printed matter as is sufficiently compressed to be sent by post as an ordinary letter. The same remark also applies to those favoured periodicals which the post office is willing to recognise as coming within its definition of a newspaper. Magazines, however, and trade catalogues are obliged to be sent at book post rates, and these are such as to seriously restrict their circulation in the United Kingdom, to say nothing of the foreign and Colonial trade. In the United States, on the other hand, all such matter is mailed at practically nominal rates. So far as trade catalogues are concerned we can, no doubt, leave traders and manufacturers to look after themselves, but so far as periodicals which fail to comply with the post office's arbitrary definition of a newspaper are affected it is obviously unfair that any such artificial restrictions should exist. There is in the nature of things no reason whatever why there should be one rate of postage for a daily paper, and quite another rate for one that is issued monthly, or even annually, except, of course, the somewhat obvious one that the post office is anxious to choke off an extensive business in the delivery of heavy packets. This may be the normal frame of mind of the holder of a monopoly, but it is certainly not one that ought to be encouraged in the public interests.

**Failures in  
Canada and  
the U.S.A.**

*Insufficiency of capital*, according to the statistics recently published by the Bradstreet Company, is the chief cause of failure in the States and Canada, being responsible for 33½ and 55½ per cent. respectively of the total failures. Incompetence (we do not know what this is intended to cover or who is the arbiter) ranks close behind with 24½ per cent. for the States and 18 per cent. in Canada. It is interesting to note that the number of failures during 1905 in the States was 10,000, being a decrease of 4½ per cent. on the previous year's figures, and 1,400 in the Dominion, or an

increase of over 21 per cent. Judging from American literature, we should have said that it was impossible for an American trader to be "incompetent." What then means that ominous 24½ per cent.? The business doctors who migrated to these shores had better return—there seems need for their eloquence at home.

**Directors and  
Promissory Notes.**

A case recently heard before Mr. Justice Buckley discloses an interesting point. Plaintiff was the holder for value of a promissory note, and defendant, the endorser, had signed his name on the document, adding the words "managing director of the A. B. C. Syndicate, Lim." In giving judgment for the plaintiff the Judge pointed out that where a person signed a bill drawer, endorser, or acceptor, and added words to his signature indicating that he signed for and on behalf of a principal, or in a representative capacity, he was not personally liable, but the mere addition to the signature of words describing himself as an agent or representative did not exempt him from personal liability. There would seem to be much virtue in the word "for."

**British Railways  
and the Restraint  
of Competition.**

Now that the London and North Western and Midland Companies have fallen on each other's necks, and thus rendered railway co-operation more than a possibility, it may be pertinent to consider a few of the benefits which, according to a financial contemporary, may be expected to accrue. There should be large savings in the collection and delivery of goods, minerals, and parcels traffic, and the expenses of canvassing should be lessened. Competitive passenger services may be cut down, the better loading of trains will be assured, and last, but by no means least, the promotion of new and competing lines will be restricted, with a consequent avoidance of heavy capital expenditure. If the scheme is really serious, and has come to stay, a new era of prosperity seems to be dawning for railway shareholders.

**Insurance  
Accounts and  
Simplicity.**

The question as to the advisability of the accounts of the Marine and General Mutual Life Office being audited by amateurs instead of by professional accountants was, we understand, raised at the recent meeting by a shareholder. The chairman, in his reply, is reported to have said that the work of auditing the accounts of a society like theirs was "of the very simplest possible

character." We seem to have heard of that simplicity before!

**Repayment of Income Tax.** The secretary of one of the Inland Revenue Worriers' Associations prints a list of "grounds upon which a reduction or return of income-tax should be claimed," which is said to be the most complete which has ever been issued to the public:—

Who pay back interest whatever the income may be.

Who pay insurance premiums whatever the income may be.

With incomes not exceeding £700 per annum.

Minors (sometimes even for twenty years).

Who have come of age within the last three years.

Beneficiaries under wills or trusts,

*Femmes soles*, widows, or spinsters.

Executors, &c., of deceased persons' estates.

Who have been over assessed.

Who have suffered business losses.

Whose profit during the last year has decreased.

Who have been doubly assessed.

Who have discontinued their business.

Who have received capital which has been assessed as income.

For set-off of loss against profit or against private income of self and wife.

Some reservation or explanation seems to be desirable, otherwise the list may be looked upon as a sprat to catch a mackerel.

**Accounts and Illogical Deductions.** It appears to be quite a popular delusion that accounts are easy of comprehension, and if there is one thing that the average man flatters himself he thoroughly understands it is accounts. Hence, we are treated from time to time to some amusing instances of illogical deductions arrived at by persons who, knowing little of cause and effect, find the result first and then the figures to fit it! Last week, before Mr. Registrar Linklater, several applications for discharge were made by various bankrupts. In the case of one firm the Official Receiver reported that they had traded with knowledge of insolvency, and had been guilty of unjustifiable extravagance in living. The first conclusion was arrived at from the amount which the debtors' property would have realised under a forced sale, and the second from the fact that the drawings were in excess of the profits! The learned Registrar,

however, was unable to follow this view, for he pointed out that it was not the duty of the debtor, in determining when he should stop trading, to consider his position as if it were immediately being broken up under the hammer. He was entitled to consider it from the point of view of a careful, prudent, unhurried realisation of assets. As regards the second conclusion, the Registrar described this as the clearest case of a *non sequitur* that he had ever known, and he pointed out that the money might have gone in hundreds of other ways than in extravagant living. The discharges were granted subject to bankrupt's consenting to judgment for nominal amounts.

**Secret Reserves.** The resolutions, which we referred to in our article last week, authorising the directors of the Birmingham Small Arms Company, Lim., to create an Internal Secret Reserve Fund were submitted at the confirmatory meeting held last week, and declared carried after a somewhat stormy discussion. It was stated that the powers conferred upon the directors by these resolutions are similar to those possessed by such leading local companies as Guest, Keen & Nettlefolds, the Amalgamated Wagon Company, W. & T. Avery, Kynochs, Docker Bros., and Bellis & Morcom. The whole question is, of course, largely a domestic one in each case. It would, we think, however, remove much of the misunderstanding and some of the difficulties obtaining if all companies maintaining a Secret Reserve were required to mention the fact in a foot-note to their Balance Sheets, and if it were compulsory in all cases that such funds should be invested in trustee securities.

**The Duties of Executors.** Our correspondent *The Law Times*, in a recent issue, makes a somewhat unexpected announcement that an executor is under no legal obligation to disclose to beneficiaries under a will the contents of that will, or the extent and character of their benefits thereunder. If that be so—and there would appear to be authority for the assertion—we agree with our contemporary that the present law appears to assist a dishonest executor in converting other people's property to his own use. We think the law should be altered, obliging an executor to make all reasonable disclosures to creditors and beneficiaries, and expressly empowering him to charge the expenses thereof against those making the inquiries.

**Solicitors' Accounts.**

The following letter, which has appeared in the columns of most of our legal contemporaries, will doubtless prove of interest to those of our readers who are following the movement at present on foot in the Law Society for the improvement of solicitors' accounts, with a view to providing greater security to clients than at present exists:—

**THE PUBLIC TRUSTEE.—SOLICITORS' CLIENTS' MONEYS.**

*(To the Editor of the Solicitors' Journal.)*

Sir,—The first paragraph of "Current Topics" in your issue of the 17th inst. suggests matters worthy of consideration by provincial members of the legal profession.

All trustees are not solicitors; indeed comparatively few solicitors are trustees. This notwithstanding, the present Lord Chancellor, and other legal gentlemen in the House of Commons last Session, seemed to think that a Public Trustee Bill was necessary on account of the lamentable conduct displayed in some three or four cases of legal professional insolvency occurring in the South of England.

"Out of the frying-pan into the fire" is an old saying, and to the consideration of all persons interested in trust assets outside the legal profession I commend for consideration the suggestion that the costs attendant upon the employment of a public trustee will ultimately amount to far more per annum than the losses arising through professional misconduct; besides, the latter may be stopped, or at least minimised, whilst the former can but increase, and no public trustee, permissive or compulsory, will accept the responsibility of dealing with trust assets except upon such data as are commonly required by the Chancery Division, and possibly at not much less cost. In short, the office of public trustee would in the natural course of things become the equivalent of a department of the Chancery Division.

At the annual provincial meeting of the Law Society, held in Leeds in October last, I proposed two resolutions, and their fate, coupled with subsequent events, appears somewhat significant.

The first resolution was as follows:—

"That it be a recommendation to the Council to take the matter of the safety of clients' moneys into consideration, with the view of adopting some authoritative rule or regulation to which all members of the profession must conform for the satisfaction of the public."

This was suggested by the papers on "Solicitors' Accounts" and "Clients' Money," of Mr. J. W. Budd and Mr. Wm. Godden, both of them, I believe, members of the Council of the Law Society.

My second was as follows:—

"That the Council of the Law Society be desired to offer an unflinching opposition to all Public Trustee Bills."

This was suggested by a paper on that subject read by Mr. W. P. Fullagar, of Bolton.

The special feature of my first proposition was compulsion. I endeavoured to show that there were four, or at the very least three, things which every professional man ought, and should be compelled, to do as a condition precedent to practising, just as he is compelled to take out his certificate.

These four things are: (a) The keeping of a Cash Book; (b) a Ledger; (c) a separate banking account for clients' moneys; and (d) a half-yearly or quarterly audit by an independent Chartered Accountant. I am not aware of any profession or business which, as a class, does as much as this. Although some people may, with apparently sufficient reason, be sceptical as to the necessity for the two first propositions, it was, I believe, Mr. Manisty who, as a member of the Disciplinary Committee of the Law Society, confirmed my view by stating the lamentable deficiency in Cash Books and Ledgers in cases coming before that Committee. No properly conducted professional office of any size, in the larger towns at any rate, exists without the four things I mention. They, at least, have nothing to fear from that compulsion, which, indeed, all members of the profession will in due course of time, I feel sure, come to admit is quite as much to their own, as to their clients' interests.

At that annual meeting observations fell from the President justifying a suspicion that the Council of the Law Society had already committed themselves to a Public Trustee Bill of some kind, and that, too, without, so far as I am aware, any consultation with the country Law Societies.

The country practitioners are vastly more interested in the subject than their brethren in London. It was not unnatural, therefore, that my second resolution should be, as indeed it was, rapidly hustled out of existence.

I did not know at the time, but the local press the following day apprised me, that Mr. Budd had seconded my first resolution. But the luncheon hour intervened in the discussion. What took place during that interval I do not know, but subsequently Sir Albert Rolit proposed:—

"That this meeting refers the subject of solicitors' accountancy to the Council, in consultation with the country Law Societies, for consideration, and such action as it may think best in the interest of the public and of the profession."

This was carried after the Chairman had declared my resolution to have dropped for want of a seconder.

If the spirit of my resolution had been adopted and the necessary machinery added to the rules of the Law Society, there would be few solicitors in England who would fail to see the propriety, probably necessity, of being members.

Now let us consider what has taken place since the annual meeting. We may be forgiven for assuming

that the Council intended something by Sir Albert Rollit's resolution. I have made inquiries, and cannot find that the country Law Societies have been either consulted, or even approached, with regard to that resolution; in fact, it appears to have found its destination in the waste-paper basket.

I am informed that the Council consider that it is too late now to confer with the country Law Societies, but that they (the Council) are in conference with the Lord Chancellor with regard to a Public Trustee Bill. What they are doing, and what they intend to do, will, I presume, be kept a secret until it suits their convenience to allow the profession at large to know the position in which they are placing those they represent. I have instituted inquiries in another direction, and cannot find that the Associated Provincial Law Societies, which professes to solely represent the country Law Societies, has done, or is doing, anything whatever with regard to the matter, and I feel justified, therefore, in suggesting that their leaders may be quietly waiting—as they did in the land transfer case—to put forward as their own creation some proposition which is at present in process of manufacture by the Law Society—i.e., hatch the egg laid for them by the cuckoo. I may, of course, be wrong. It can, however, be easily put right. If I am not wrong, then there is confirmation of the opinion formed by the Yorkshire Law Societies in 1897-8 that the Associated Provincial Law Societies is an institution more dangerous than useful to the legal provincial practitioner. It does not possess either President, Vice-President, or Treasurer. It holds its meetings in the offices of the Law Society in Chancery Lane. Its only officials are in close personal friendship and sympathy with the Council of the Law Society, and its greatest activity is shown when apparently the steam is turned on by that Council.

Let us also consider the probable course of the quietly moving stream as regards the more or less dim and distant future. Assume the appointment of a permissive public trustee. We are entitled to speculate as to how long it will be before he drifts into a compulsory official and from a private person into a public office, which will require, and in due course of time obtain, a local habitation and a name. My pessimistic fear is that such habitation will be far greater in extent than either the Land Transfer Office or the Bankruptcy Department. There are more testators leaving assets than owners of real estate or bankrupts.

A public trustee, so long even as he is a mere machine for the custody of money, can do little towards diminishing, but can do something towards the increase of, the labours of the London profession. If and when country assets get into his hands, is it not possible that London agencies must of necessity obtain an increase in their provincial business at the expense of the provincials as well as of their clients? Nay, is it not possible that country trust matters may ultimately almost entirely pass into the hands of the London profession, or at least to the larger provincial

centres? In short, is there any objection, so far as London, Bristol, Birmingham, Liverpool, Manchester, Newcastle, and Leeds are concerned, to centralisation; and if the present bubbling source is allowed to swell into an irresistible river, can it be assumed that the Council of the Law Society will find it possible to do more than lift their hands in hopeless helplessness against an inexorable course of events, whilst the provincial Law Societies accept everything with calm resignation?

Leeds, February 20.

ARTHUR MIDDLETON.

**The Power of Directors.** A decision of considerable interest was delivered by Mr. Justice Warrington on the 23rd ult., in the matter of *The Automatic Self-Cleansing Filter Company, Lim. v. Cunningham and others*, on a motion by the company and the shareholders for an order that the directors might be ordered to forthwith seal and carry into effect an agreement for the amalgamation of the company's undertaking with another filter company. On behalf of the defendant directors it was contended that the proposed sale was imprudent and the terms improper. His Lordship decided that as the company's articles of association provided that the management of the business and the control of the company should be vested in the directors, it was not competent for the shareholders by a simple resolution to take such control out of the hands of the directors, in that that would in effect be an alteration of its articles of association. He accordingly refused the injunction asked for, with costs. This seems to be another of those cases in which litigants have mistaken their remedy. If the plaintiffs possessed a simple majority of voting power it would be competent for them, at the proper time, to remove the defendant directors and replace them by others whose views were similar to their own. Obviously, however, there would be an end of all directorial responsibility if a bare majority of shareholders present at a meeting were in a position to compel the board to act in a manner which the latter considered improper in the interests of the company.

**Systems of Internal Check.** The rules of friendly societies and similar institutions are not as a rule drawn up with any very effectively contrived system of internal check compulsorily provided for thereunder, but in one respect at least such rules are, at all events in many cases, well framed, and that is in requiring that there shall be a secretary and also a treasurer, upon each of whom certain specified duties are laid. If the apportionment be skilfully arranged the effect

may well be that each acts as a useful check upon the honesty of the other. In the case of a loan society against which a winding-up order was recently made it was, however, reported by the Assistant Official Receiver, at meetings of creditors and members held last year, that in January 1892 the then secretary was also appointed treasurer, and acted in both capacities for upwards of twelve years. It was mentioned at the meeting that this gentleman is now serving a term of imprisonment. We cannot help thinking that there is not much use in requiring the rules of such societies to be approved by the Chief Registrar of Friendly Societies before they become effective, unless that department is to take some reasonable steps to see that the rules, after being enacted, are carried out. In many cases it might be extremely difficult for such supervision to be undertaken without an examination of the books, but the infraction of a rule of this description would be obvious to anyone who took the trouble to examine the returns periodically filed—unless, of course, those returns were deliberately falsified.

#### Reconstructions and Dissentient Shareholders.

We have from time to time expressed the opinion in these columns that a clause in a reconstruction agreement to the effect that dissentient shareholders should only be entitled to receive their proportion of such sum as the unapplied for shares in the new company may produce is void, as attempting to deprive such shareholders of the rights conferred upon them under Sections 161 and 162 of the Companies Act, 1862, but in the absence of any specific decision upon this point it is notorious that such a clause has often been inserted in reconstruction agreements to the great prejudice of shareholders' interests, and the scheme carried through without challenge. On a motion arising out of the action of *Bisgood v. The Nile Valley Company, Lim.*, however, which came before Mr. Justice Kekewich on the 23rd ult., his Lordship made an order restraining the defendant company from carrying out the agreement as it stood. How far it would be acceptable in another form he could not say, but in its present form was unacceptable. The full report of the decision will be worthy of careful study.

#### Some Reforms Urgently Needed.

A legal contemporary gives some legal hardships settled by decided cases which are not generally known outside legal circles, and which may therefore be productive of grave

injustice to innocent persons. From the list we extract the following:—

(1) Under the Limitation Act, 1623, bankers become the owners of customers' moneys not drawn upon for six years.

(2) Both executors and trustees in bankruptcy are personally liable for the repairing covenants of leases in the event of the assets of the trust estate proving insufficient.

(3) On the disclaimer of a lease in bankruptcy the liability of a guarantor of the rent is determined.

(4) An agreement to take a smaller sum than that due in satisfaction of a debt is void unless it be by deed, or unless the agreement be to take not cash, but a cheque or other negotiable instrument.

(5) Although the insuring tenant is bound to expend moneys recovered on an insurance policy in rebuilding, an insuring landlord is not so bound.

### Current Law.

*(Under this heading are noted from time to time the salient features of decisions of interest which, so far, have not appeared in our "Law Reports." As, however, these notes are necessarily greatly condensed, reference should in all cases be made to the fuller report when it appears.)*

#### COMPANY LAW.

*Bisgood v. Nile Valley Company, Lim.*

Kekewich, J.

Held, following *Manners v. St. David's Gold and Copper Mines, Lim.*, that a company should be restrained from carrying into effect a reconstruction scheme which does not duly provide for dissentient shareholders.—(*Times*, Feb. 23.)

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

#### Income Tax.

*(To the Editor of The Accountant.)*

SIR,—Relative to the question of correct assessment on a business in cases of succession, as raised in your columns by "Justice," may I be allowed to state that, while agreeing with the views put forward by Mr. Herbert Edwards as to the correct basis of charge, I am also of opinion that at the end of the year of assessment it would be open to the successor to appeal on the basis of actual profits as ascertained for that year.

I believe there is a regulation to this effect made by the board of Inland Revenue, and that in practice the majority of Surveyors act on it, whereby an appellant who has *not been in receipt of the profits of a business for three years* can apply for the appeal to be determined on the *profits of the year of assessment*.

Yours, &c.,

ZERO.

(To the Editor of The Accountant.)

SIR,—A point in income-tax has recently arisen on which I should be glad to have your opinion, and if you could manage to answer my question in this week's issue I shall be much obliged.

Are Christmas Boxes to customers a charge against profits for income-tax purposes? As regards Christmas Boxes to employees I don't feel much doubt (though I should be glad of your opinion on that also), as I look on them as additional wages, but in the other instance it is not so easy to decide whether they should be treated as subscriptions or as a trade expense. I find no reference to it in Murray & Carter's "Guide."

Yours faithfully,

D. M. G.

[It would rest with the Commissioners to decide as a fact whether the payments were wholly and exclusively laid out for purposes of trade, &c —ED. *Acct.*]

(To the Editor of The Accountant.)

SIR,—I have read with interest the letter of "Justice," and the reply from Mr. Edwards, together with the editorial note in your issues of the 10th and 17th inst.

The point raised would appear to be one of those numerous instances, arising out of income-tax assessments, which are left to be fought out between the Surveyor and assessed.

In your note on page 201 (17th February) you say, *inter alia*:—"The question at issue is not what is the justice of the matter, but what is the law," and quote Income Tax Act, 1842, Section 100, in support of your statement that the salary of J. Brown, Junr., must be added to the assessments of the previous three years.

Messrs. Murray & Carter, in their "Guide to Income Tax Practice," are of opinion that the salary of an employee admitted into partnership should be added to the previous assessments, and their example is somewhat analogous to the example given by "Justice," but they further add: "Many Surveyors, however, do not so adjust the old figures, but leave the profit as

"ascertained—an advantage to the taxpayer, but "apparently wrong in principle, though approved by "the authorities."

This would seem to favour the view that in the strict sense of the Act the Surveyor has no ground for adding the salary.

What would be the assessment if, upon the death of J. Brown, Senr., J. Brown, Junr., refused the business, and it was purchased by John Smith, who did not require the services of a manager?

According to the Act of 1842 (Section 100, Sch. D, fourth rule applying to cases 1 and 2), in the absence of any falling short of profits from some specific cause, would it not be on the average of the profits of the business for the three years immediately prior to the year of assessment, viz.:—

					£	s	d
1902	..	..	..	..	300	0	0
1903	..	..	..	..	280	0	0
1904	..	..	..	..	240	0	0
					3)820	0	0
					£273	6	8

If this be so, wherein lies the difference between John Brown, Junr. (the son) purchasing the business, and John Smith (the stranger)?

Thanking you in anticipation for your kind insertion of this letter,

Yours truly,

26th February 1906.

INTERESTED.

(To the Editor of The Accountant.)

SIR,—I have only recently read the letter in your issue of the 10th inst. signed "Justice," also the letters in your subsequent issues, and as the matter is of general interest, I give below an extract from a letter written by me in March 1903 to the Board of Inland Revenue in respect of a case for all practical purposes on a par with that described by "Justice":—

"The appellant, Mr. A. R., was in the employ of his father (Mr. G. R.) as manager for several years, including the years 1899 and 1900 and up to June 30th in 1901, when his father died and he succeeded to the business. In the accounts above referred to, I have charged the salary of the said A. R. of £400 per annum for the years 1899 and 1900 and for the period up to June 1901, and the Surveyor in arriving at the average annual profit for the assessment of the business objects to such debits for salary and has struck them out. I can find no authority for such disallowance, neither can the Surveyor refer to any decision on the point, and my client has taken advice on the matter and is advised to



protest. Can you refer me to any authority on the subject?"

I did not receive a direct reply from the Board of Inland Revenue, but the local Surveyor asked me to give him a call, when he informed me that the Board had instructed him to withdraw his objection and to allow the salary to be charged in arriving at the assessment. I consider this course is consistent legally and equitably.

I am, Sir, yours faithfully,

J. WALTER G. HILL.

Birmingham, 26th February 1906.

#### Informal Deed of Arrangement.

(To the Editor of The Accountant.)

SIR,—I should feel obliged if you would kindly let me know the legal position of an accountant who, with the approval of such creditors as are aware of the arrangement, foregoes taking a deed of assignment and realises and apports the estate *pro rata*, taking a receipt in discharge when the accounts are closed.

Yours faithfully,

22nd February 1906.

CHARTERED.

(To the Editor of The Accountant.)

SIR,—My attention has lately been directed to a circular in which an accountant states that, in pursuance of his instructions from the largest creditor, he has, without going to the expense of a deed of assignment or registration, realised the debtor's estate and encloses cheque for the dividend. As this is the first intimation of the debtor's insolvency, one not unnaturally resents the apparently high-handed manner in which the creditor and accountant have acted. Would you or any of your readers state the rights of the general creditors and the liabilities of the accountant in a case of this kind, where the claims of the creditors who are willing to combine are insufficient to support a petition in bankruptcy.

Yours truly,

22nd February 1906.

CREDITOR.

#### Competition between Accountants.

(To the Editor of The Accountant.)

SIR,—One of your leading articles in to-day's issue touches upon the ever-recurring question of admitting "all sorts and conditions" of accountants to the Institute.

Whatever the ultimate advantages may be, such a step would be grossly unfair to members who have expended time and money in obtaining a qualification.

I quite agree that you cannot interfere with accountants who are already practising, but surely it would be possible to obtain an Act prohibiting any unqualified man from *commencing* practice after a certain date. "Qualified" men would be members of the Institute and members of the Incorporated Society. Unqualified practitioners would then gradually become extinct.

If we could get thus far, an amalgamation of the Institute and the Society (which, probably, could be arranged to the satisfaction of both parties) would afford a final solution of the problem.

Chartered Accountants of Scotland and Ireland could qualify for practice in this country by admission to the English Institute on passing the Final Examination.

Yours faithfully,

CECIL TILDESLEY.

Wolverhampton, 24th February 1906.

#### Gas Companies and Depreciation.

(To the Editor of The Accountant.)

SIR,—Your leading article on this subject is very helpful as giving a review of what you conceive to be the legal position on the matter, but it still leaves me in considerable doubt as to the duty of an auditor in relation to the subject.

It would seem to have been generally assumed that the limitation to the Reserve Fund was a limitation upon the power of the company to provide for depreciation out of profits. Personally, I cannot see anything in the words to warrant that assumption; but even if that view be admitted, and there is a clear legal restraint upon the statutory companies in this respect, it does not alter the physical aspect of the matter. The corroding influence of time cannot be restrained by Acts of Parliament, and it seems to me that at any given time the amount of depreciation by reason of wear and tear must always exceed the restoration by repair and renewal, and in the course of many years this depreciation must become considerable. Does not a Reserve Fund mean to the average investor "undivided profits" available for distribution in case of a deficiency of current revenue? If so, the same provision cannot at the same time stand as a provision for wear and tear.

Should not the auditor's certificate relate to the accounts as stated for presentation to the shareholders, and if to his mind the physical fact remains that depreciation has taken place in excess of restoration, is it not his duty to draw attention to this fact

even though Acts of Parliament had more explicitly debarred the companies from making provision for this depreciation?

The failure of the Legislature to appreciate actualities does not make a Balance Sheet correct, and if in the opinion of the auditor the Acts should have allowed—should even have directed—reasonable and proper provision for physical decay, is it not his bounden duty to mention the matter in his report?

Yours faithfully,

ENQUIRER.

### Net Profits Earned by a Company.

(To the Editor of The Accountant.)

SIR,—Referring to my letter which appears in your last issue, and more particularly to your comments thereon, I fear that by unnecessarily importing the word "Capital" when referring to the Profit and Loss charges I somewhat obscured the point to which I desired to call attention. My object in using the term "Capital" was simply to distinguish such charges as those mentioned from trading charges, with a view to making a distinction between the "net profits of" a company, and the "net profits earned by" a company. What I should like to have from your readers is a definition of the expression "net profits earned by a company." Is not "the net profit earned" the balance of Trading Account, and "net profit" the balance of Profit and Loss Account?

Yours, &c.,

LEITH.

[It seems to us that the two terms are interchangeable.—ED. *Acct.*]

### The Central Association of Accountants. Limited (by Guarantee) Incorporated.

MR. GILL HALL, A.S.A.A., F.A.A., Secretary of the above Association, is directed by his Council to thank us for our courtesy in giving publicity to his letter of the 14th ult. His Council regrets, however, that our comments thereon seriously misrepresent the facts of the case, and are in themselves calculated to considerably damage the Association and its members, unless immediately and fully rectified.

The misrepresentation being that we stated that the Association recommended its members to use the designation "Incorporated Accountants," with an affix. This, it is stated, is wholly untrue. The designation appears to apply to yet another Association, viz., The London Association of Accountants. Members of the Association designate themselves "Associated Accountants," and do not use any other designation.

### Chartered Accountants' Masonic Lodge.

A PETITION has been signed to Grand Lodge to issue a warrant constituting the Chartered Accountants' Lodge, with the object of giving the younger members of the profession an opportunity of knowing the older members of the craft. Amongst the founders who signed the petition are the following:—

Paul Bevan (Woodthorpe, Bevan & Co.).  
T. Bowden (Thomas Bowden, Son & Nephew).  
Ernest Edmonds (Edmonds, Son & Clover).  
Charles Fox (Kennedy & Fox).  
W. H. Fox (Fox, Sissons & Co.).  
A. H. Gibson (Gibson & Ashford).  
Wm. Harris (Craig, Gardner & Harris).  
H. Woodburn Kirby (Woodburn Kirby, Page & Co.).  
F. W. Pixley (Jackson, Pixley & Co.).  
William Plender (Deloitte & Co.).  
J. H. Whadcoat.  
A. F. Whinney (Whinney, Smith & Whinney).  
J. W. Woodthorpe (Woodthorpe, Bevan & Co.).

### Chartered Accountants' Golf Club.

A MEDAL COMPETITION of 18 holes, under handicap, will be held at Romford, on the morning of Thursday, the 8th March 1906, by kind permission of the Romford Golf Club; the first prize being kindly presented by F. W. Pixley, Esq., and the second prize by the Club.

A Bogey Competition of 18 holes, under handicap, will be held on the afternoon of the same day; the first prize being kindly presented by Ernest Cooper, Esq., and the second prize by the Club.

A brake will meet the 10.20 a.m. train from Liverpool Street, arriving at Romford at 10.52 a.m. Cabs convey golfers to the Club at a charge of 1s. 1d. for a single person, or 7d. per head if more than one.

### Result of 1st Round of Tournament.

E. J. Husey beat W. H. King.  
H. Wingfield walked over.  
R. S. Bain beat A. H. Heap.  
G. Dixey " H. Champness.  
G. M. Gilbert " A. R. King Farlow.  
H. Walters walked over.  
W. F. Mapleston beat H. Kidson, Junr.  
T. D. Cocke " G. Gordon.  
H. M. Smith " W. W. Read.  
S. P. Derbyshire " C. F. Bowker.  
T. G. Mellors walked over.  
E. M. Robinson "  
S. C. Leonard "  
D. Hill "  
C. F. Burton beat M. Jenks.  
A. Goddard walked over.  
H. W. D. Soper

## The Chartered Accountants' Society of London.

### Syllabus—Spring Session, 1906.

*President*—Edwin Waterhouse, M.A., F.C.A.

*Secretary and Librarian*—Sydney G. Cole, F.C.A.,  
1A Frederick's Place, Old Jewry, E.C.

Feb. 28.—Discussion on November (1905) Examination Questions. Openers—*Final*, W. D. Webster ;  
*Intermediate*, A. C. Anderson.

Mar. 7.—Lecture, "Bankers, and their relation to the Money Market." Stanley G. Smith, A.C.A.

" 14.—Lecture, "Vouching in the Conduct of Audits of the Accounts of Joint Stock Companies." H. E. Barham, F.C.A.

" 21.—Lecture, "Local Authorities and their Work." Percy Ashley, M.A.

" 28.—Lecture, "Parliamentary Companies." F. N. Keen, LL.D., A.C.A.

April 4.—Joint Debate with the Law Students' Debating Society. "Officialism; its Dangers to Professional Men."

" 11.—Lecture, "Compositions and Schemes of Arrangement in Bankruptcy." A. H. Partridge, A.C.A.

" 18.—Twenty-Third Annual General Meeting.

The lectures, debates, &c., are held on Wednesdays, and commence at six o'clock, unless otherwise stated. All meetings and classes are held at the Institute of Chartered Accountants (entrance in Great Swan Alley).

The Lending Library at 1A Frederick's Place, Old Jewry, is open daily from 9.45 till 5.30. Saturdays, 9.45 till 1.

### COACHING CLASSES FOR THE PREPARATION OF CANDIDATES FOR THE INSTITUTE EXAMINATIONS.

The Classes meet at the Institute.

#### *Tutors.*

*Final*—Auditing—L. Cuthbert Cropper, F.C.A.

Bookkeeping and Accounts—Lawrence R. Dicksee, F.C.A. (Professor of Accounting, Birmingham University).

Law—Herbert Jacobs, Barrister-at-Law.

*Intermediate*—Bookkeeping, Accounts, and Auditing—Percy Child, A.C.A.

Law—Herbert Jacobs, Barrister-at-Law.

The Classes begin in December and June respectively. No Classes are held during August. Full particulars will be sent to each member who has not passed the examinations.

#### *Prizes.*

*Final*.—First Prize, Ten Guineas (in books, or the Committee will pay the successful candidate's entrance fee to the Institute). Second Prize, Three Guineas.

*Intermediate*.—First Prize, Five Guineas. Second Prize, Three Guineas.

The above prizes will only be awarded in books, and provided that :—

(a) Members are amongst the first five successful candidates at their Examinations.

(b) In the Final Examination successful candidates have been members of, and paid subscriptions to, the Society for three consecutive years.

(c) In the Intermediate Examination successful candidates have been members of, and paid subscriptions to, the Society for two consecutive years.

The special attention of candidates for the forthcoming Intermediate Examination to be held in May is directed to the "Robert Fletcher Memorial Prize," for which they may be eligible. Intending candidates should apply to the Institute for fuller details.

#### *Elementary Free Classes.*

Bookkeeping, Accounts, and Auditing, conducted by Percy Child, A.C.A.

This class meets on ten Monday evenings, at 6 o'clock, commencing on the 15th January 1906, and is specially intended for the junior members of the Society.

Law, conducted by Herbert Jacobs, Barrister-at-Law.

This class meets on ten Friday evenings at 6 o'clock, commencing on the 19th January 1906. The following subject will be dealt with :—

"ELEMENTARY PRINCIPLES OF CONTRACT LAW."

#### *Examinations.*

Examinations will be held at the end of each of the above courses of lectures, and prizes awarded.

No member shall be admitted to the examinations if at the date of the last meeting of the Law or Accounts Class (whichever shall first happen) he has served under articles for a longer period than two years; or, in the case of University Graduates, one year.

#### *Junior Essay Competition.*

The Committee offer a First Prize of Three Guineas, and a Second Prize of One Guinea for the two best essays on :—  
"The Duty and Responsibility of Auditors with regard to the item 'Stock-in-Trade' on a Balance Sheet."

#### *Rules.*

(1) Essays must be written (not typed) on one side of the paper only.

(2) The name of the writer must not appear upon his essay, but a *nom de plume* must be used. The essay must be accompanied by a sealed envelope, addressed to the Secretary, marked on the outside with the writer's *nom de plume* and the words "Essay Competition"; the envelope must contain the writer's name and address. The envelopes of the successful essayists will alone be opened, the others will be destroyed.

(3) Essays must not exceed twelve pages of foolscap, and must be delivered on or before 30th April 1906.

(4) The essays submitted for competition will become the property of the Society, and will in no case be returned.

(5) In the event of there being less than three essays submitted, the Committee reserve the right to withhold both prizes.

(6) The second prize will be awarded only in the event of the arbitrator reporting that the essay placed second is of sufficient merit to deserve the prize.

The competition is open to all members of the Society who have not passed the Final Examination of the Institute.

In the event of a prize being awarded, the successful essayist will be invited to read his essay during the Autumn Session.

### Meetings for the ensuing Week.

**Monday**—MANCHESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Leaseholds," by Mr. A. R. Moon, LL.B., Solicitor.

**Tuesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Examination Committee, at 2 p.m.

BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—"Hat Night." This meeting will be preceded by tea at 6 o'clock, at the Library, 8 Newhall Street; 6.30 p.m.

**Wednesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Finance Committee, at 12 noon; Council Meeting, 2 p.m.

LONDON CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Bankers, and their relation to the Money Market," by Mr. Stanley G. Smith, A.C.A., at the Hall of the Institute, Moorgate Place; 6 p.m.

LEICESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Colliery Accounts," by Mr. E. E. Price, F.C.A., at Winchester House, 1 Welford Road; 7 p.m.

KINGSTON-UPON-HULL CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Vouchers," by Mr. A. W. Retchford, A.C.A., at the Hall of the Incorporated Law Society, Bowlalley Lane; 7.45 p.m.

**Thursday**—EDINBURGH CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Discussion (Informal).

**Friday**—NOTTINGHAM CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "The Criticism of Accounts," by Mr. W. R. Hamilton, F.C.A., at 1 King John's Chambers, Bridlesmith Gate; 7.30 p.m.

### Personal.

MR. F. M. HAWNT, F.S.A.A., F.C.I.S., announces that he has removed to Scottish Union Chambers, 110 Colmore Row, Birmingham.

MESSRS. HOWARD BUTTON, BRETTELL & Co., Chartered Accountants, of 75 New Street, Birmingham, and 49 Queen Victoria Street, London, announce that their partnership has been dissolved by mutual consent. Mr. HOWARD BUTTON will continue to practise at 49 Queen Victoria Street, London, E.C., and will take over and carry on the London business of the firm. Mr. HOWARD W. BRETTELL has joined the firm of Messrs. HOWARD SMITH, SLOCOMBE & Co., Bank Chambers, 11 Waterloo Street, Birmingham, and will take over and carry on the Birmingham business of the firm.

MR. W. H. LOVATT, Chartered Accountant, announces that he has commenced to practise as a Chartered Accountant at Colmore Chambers, 3 Newhall Street, Birmingham. He served articles with Mr. ERIC M. CARTER, of the firm of Messrs. CARTER & Co., 33 Waterloo Street, Birmingham, with whom he has been continuously engaged for the last seventeen years.

MR. FREDK. P. PAGE, F.C.A., announces that the partnership formerly existing between Mr. H. C. SARGENT, Mr. ARTHUR TAYLOR, and himself, under the firm name of SARGENT, PAGE & TAYLOR, London, New York, and Cincinnati, has been dissolved by mutual consent. Under the terms of the dissolution, all interest in the American practice of the firm, including the exclusive right to the use of the firm name in America was acquired by him, and the practice has now been amalgamated with that of Messrs. DELOITTE, PLENDER, GRIFFITHS & Co., New York, in which firm he has become a partner. The business, both in New York and Cincinnati, will in future be conducted under the firm name of DELOITTE, PLENDER, GRIFFITHS & Co. On or before 1st May next their New York address will be 49 Wall Street. Until then they will continue to occupy their present offices. Their address at Cincinnati will remain the same as at present, viz., Union Trust Building, Mr. VIVIAN HARCOURT being the resident partner.

MESSRS. T. F. THORNE, LANCASTER & Co., Chartered Accountants, announce that they have removed from 10 Ironmonger Lane to 1 Basinghall Street, London, E.C.

THE partnership of G. W. TEMPLE and E. G. SHORROCK, as Certified Public Accountants, carried on under the firm name of TEMPLE & SHORROCK, at 427-428 Pioneer Building, Seattle, has been dissolved. The business has been taken over and will be carried on by E. G. SHORROCK at the above address in his own name.

MR. SEYMOUR WALTON, C.P.A. (of WALTON, ROBERTS & Co.), Mr. J. PORTER JOPLIN, C.P.A., Mr. R. S. BUCHANAN, C.P.A., and Mr. GERALD L. DE VOR, C.E. (of BUCHANAN, DE VOR & Co.), announce that they have formed a co-partnership dating from January 1st 1906, under the firm name of BUCHANAN, WALTON, JOPLIN & DE VOR, Accountants and Business Systematisers, with offices at 189 La Salle Street, Chicago.

MR. ARTHUR WHINNEY, of Messrs. WHINNEY, SMITH & WHINNEY, Chartered Accountants, 32 Old Jewry, E.C., has been appointed Consulting Accountant to the Central (Unemployed) Body for London.

## Tasmanian Institute of Accountants.

THE eighth annual meeting of members was held at the registered office of the Institute, Cook's Chambers, Elizabeth Street, Hobart, on Wednesday, 13th December 1905, the President (Mr. H. J. Wise) in the chair.

### Report and Accounts.

The following is the eighth annual report of the Council, year 1905:—

Gentlemen, your Council has pleasure in submitting to you its eighth annual report, and in doing so congratulates members on the continuance of the good work done by the Institute.

### Legislation.

The most noteworthy work undertaken this year has undoubtedly been the promotion of a Bill in the Tasmanian Legislature "to provide for the registration and regulation of Public Accountants in Tasmania." Your Council had taken this matter into serious consideration at the January meeting, encouraged by the remarks made upon the subject at the seventh anniversary dinner by the Attorney-General (Hon. G. Crosby Gilmore), and at the February meeting a petition was presented, signed by every member of the Institute in the northern part of the State, urging the Council to use all its efforts to get the Government to introduce such a measure during the then approaching session. A Committee was appointed to draft a Bill, and this, consisting of some 24 clauses, was eventually accomplished and accepted by the Attorney-General, who agreed to introduce it as a Government measure. Upon its introduction strenuous opposition was manifested towards it in Hobart by those who, rightly or wrongly,

anticipated being affected prejudicially by it if passed into law, and even in the Northern capital a wave of opposition not much less strenuous was directed against it, and eventually the Bill was, with the consent of the Attorney-General, partially redrafted and remodelled. Even this did not satisfy the many opponents of the measure, and eventually the Government "dropped" it, for the 1905 session at all events. The thanks of every member of the Institute are due to the Hon. Attorney-General for his great kindness and courtesy to your Council throughout the whole business.

### Examinations.

As foreshadowed in last Report, Victoria withdrew from the hitherto existent joint scheme of Inter-State Examination at the end of 1904, and it became necessary to consider a fresh proposal, which was courteously submitted to this Institute by the Sydney Institute early in July. It was sought to establish a new joint system of examination between the Sydney Institute of Public Accountants, the Institute of Accountants in South Australia, the Tasmanian Institute of Accountants and the Institute of Accountants and Auditors in Western Australia, for a commencement, in the hope that Queensland and New Zealand would join later on. Eventually the details of the new system were agreed upon between the four Institutes first named above, and the examinations decided upon were a simple Preliminary, an Intermediate, and a Final.

Mr. H. Dunstan Vane, F.S.I.A., of Sydney, very kindly consented to act upon the Central Examining Committee as permanent representative of this Institute.

The Final Examination is divided into two sections—(a) the compulsory subjects of Bookkeeping and Auditing, to be held annually in October; and (b) the legal subjects, wherein examinations for those who have duly passed the compulsory subjects, will be held annually in April. No person may present himself for the April examination until he has passed in the compulsory subjects.

In Tasmania the Intermediate has not been made compulsory except for candidates under 25 years of age, but the Council strongly urges all students to sit for it before attempting the Final.

The October 1905 examination was the first held under this new arrangement, and of 68 Final candidates and 42 Intermediate candidates from the Institutes affiliated for the purpose Tasmania contributed one Intermediate and nine Finals. Mr. C. J. Inglis supervised the work of the Northern, and the President (Mr. H. J. Wise) and Messrs. C. J. Atkins and P. Facy that of the Southern candidates. This Institute was invited to send a representative to Sydney to sit on the Central Examining Committee, to assist in assessing marks to the work performed by the various examinees, and your Council selected Mr. J. B.

Hickson, who went to Sydney for the purpose, and who was present during a large portion of this arduous work. The result was that 13 Final candidates and 10 Intermediates succeeded in passing, the remainder failing to satisfy the examiners. Your Council regrets to state that all the Tasmanian candidates are included amongst the latter noted majority. Lack of experience and of ability to apply the knowledge gained from text-books seem to be the greatest failings among our students. A syllabus has been prepared, and issued to all registered students, which should be of some help and guidance to them in preparing for examination.

In April your Council was glad to arrange for the supervision of the examination work of a candidate from the Incorporated Institute of Accountants in Victoria at the request of that Institute, who was at the time resident in this State.

#### General.

During the year one Fellow, who has been in ill-health and out of practice for a considerable time, forfeited his membership, and Mr. H. Dunstan Vane, of Sydney, was appointed Honorary Corresponding Member of this Institute in New South Wales.

Your Council regrets that owing to the dropping of three words in the making of type-written transcript of last year's Report a reflection was inadvertently thrown upon "The Corporation of Accountants in Australia." It was

intended to say that the body named had applied to this Institute for recognition "of its journal." The omission of the three words quoted must have conveyed quite a wrong impression to readers of the Report, and your Council has apologised to the Corporation for the misstatement.

Your Council regrets to state that Mr. William Pretymann, who has been a member of the Council since the foundation of the Institute, resigned his position as such in September. The vacancy caused by such resignation has not yet been filled.

The full page advertisement in Wise's directory, giving full list of members, with the address and rank of each, as well as information relating to examinations, &c., was again renewed, being of recognised advantage to members and the public.

The most cordial relations continue to prevail between this Institute and the other principal Institutes in Australasia, as well as with Institutes in other parts of the British Dominions and Great Britain itself. The friendly notice given our Institute from time to time by the editors of *The Accountant* and *The Incorporated Accountants' Journal* is gratefully appreciated by your Council.

H. J. WISE, *President*,  
J. B. HICKSON, *Secretary*.

The Treasurer read his Statement of Account to 30th November 1905, as follows:—

Dr.				REVENUE ACCOUNT for the Year ending 30th November 1905.				Cr.									
EXPENDITURE.				£	s	d	£	s	d	INCOME.							
To Office Expenses .. .. .	..	..	..	1	8	6				By Subscriptions .. .. .	..	..	56	3	6		
• Salaries .. .. .	..	..	..	25	0	0				• Interest on Fixed Deposit .. .. .	..	..	2	9	0		
• Petty Cash .. .. .	..	..	..	4	0	0				• Examination Fees .. .. .	..	..	19	19	0		
• Library Account .. .. .	..	..	..	2	19	0									78	11	6
• Audit Fee .. .. .	..	..	..	1	1	0				By Balance forward from 1904 .. .. .	..	..	..	..	121	1	5
• Launceston Branch Board .. .. .	..	..	..	6	5	0											
• Advertising and Printing .. .. .	..	..	..	14	16	0											
• Examination Expenses .. .. .	..	..	..	15	9	8											
							70	19	2								
To Balance carried forward .. .. .	..	..	..				428	13	9								
							£199	12	11								

#### BALANCE SHEET, 30th November 1905.

LIABILITIES				£	s	d	ASSETS.				£	s	d
To Revenue Account .. .. .	..	..	..	128	13	9	By Fixed Deposit, Commercial Bank .. .. .	..	..	..	70	0	0
• J. B. Hickson .. .. .	..	..	..	6	5	0	• Library Account .. .. .	..	..	..	35	0	0
							• Commercial Bank Current Account .. .. .	..	..	..	29	18	9
						<u>£134 18 9</u>							<u>£134 18 9</u>

Note.—The final adjustment of the Examination Expenses for October Examination has not yet been made.

Examined and found correct,

T. G. LOVETT, F.T.I.A., *Auditor*.

P. FACY, F.T.I.A., *Hon. Treasurer*.

1st December 1905.

### President's Address.

The President moved the adoption of the Report and Accounts, and in doing so said :—

Fellows and Associates, in submitting the Report of the Council and Statement of Accounts to 30th November last permit me to briefly review the course of events.

I am glad to say we have concluded the eighth year of our existence with satisfaction to ourselves, and, I trust, usefulness to our students and to the public generally. The efforts made to obtain legislation for our registration and regulation brought the Institute into much prominence, not only with many of our sister Institutes, but in the various journals devoted to the profession, and a disappointment will be felt when it becomes known that the Ministry, who had introduced the Bill as a Government measure, saw fit to withdraw it from the notice paper without reading it a second time. I referred last year to the Ordinance obtained by the Transvaal Society of Accountants, and the President of that Society, when addressing the first statutory meeting, said :—"I think this is a red-letter day in the history of accountancy. We are the pioneers in this work, and no doubt some steps will have to be retraced—small ones. No doubt unexpected difficulties will crop up, but we have made the great step in advance of obtaining a Register of Accountants, and I am sure we are commencing a movement which will not end in the Transvaal. My feeling is that very soon the success—and the greater the success we have here the sooner it will be—of this movement will be reflected in the Old Country, and that we shall see there established, at no very distant date, a Register of Accountants, and registration on similar lines." It is generally admitted that the difficulties and dangers which attend registration, and which legislation would undoubtedly cure, continue to grow, as we find that during last year three new Societies have sprung up in the City of London alone. With reference to one of these the Institute of Chartered Accountants of England and Wales instituted proceedings before Mr. Justice Kekewich to prevent their registration. These proceedings failed, with costs, the Judge remarking that it was impossible for the plaintiffs to contend that they had acquired any monopoly to the name "accountant," or in the power of granting certificates. Perhaps no stronger example could be adduced for the need for registration by legislation or otherwise to protect the qualified members of our profession and to safeguard the public.

It seems to me that the trend of matters in connection with the management and regulation of accountancy is towards the establishment of one Institute for the whole of Australasia with one Central Executive Council and with Local Committees in the several States. The establishment of such an Institute would not necessarily have the effect of absorbing the local Institutes at present existing,

because it would probably be composed of practising public accountants only, but, I think, it would relieve the local Institutes of all trouble and responsibility regarding examinations, and we should have but one standard, one examination throughout the whole of Australasia, of a nature acceptable to all, and recognised all the world over.

The new joint scheme of examination arranged between the Sydney Institute of Public Accountants, the Institute of Accountants in South Australia, the Institute of Accountants and Auditors in Western Australia, and ourselves, must, for the time being, be accepted as the best obtainable under existing circumstances, and, while the standard has not been reduced, it is gratifying to find that, at the October examination, a better percentage of passes was obtained than in recent years. None of the students presenting themselves from Tasmania were successful, and at first sight this must appear discouraging. I admit it was so to myself. Our Institute, it must be remembered, shares the responsibility of the examination, and, like the other States, we have a representative on the Examining Board. It must not be contended that equal opportunity was denied to Tasmanian students, and, as Mr. Gordon L. Creasey, who coached most of them, admits that the papers were fair, and such as the students might expect to receive, it follows that the students were themselves prepared only for the Intermediate Examination instead of the Final. I would like to take this opportunity of strongly recommending future students to present themselves for the Intermediate Examination before attempting the Final. They would thereby, if successful, receive an important diploma and become encouraged to proceed with their work, whereas to attempt the Final Examination straight away and fail brings them nothing for themselves and discouragement to all concerned. I desire on behalf of this Institute to acknowledge the services rendered in this connection by Mr. H. Dunstan Vane, F.S.I.A., of Sydney, and Mr. J. B. Hickson, F.T.I.A., of Hobart, who both represented this Institute on the Central Examining Board in Sydney, and I congratulate the Board generally upon the result of its very arduous labours.

The Statement of Accounts submitted is prepared by our Treasurer, Mr. P. Facy, and duly audited. It discloses that our receipts have slightly exceeded the expenditure. And now, in conclusion, I desire to tender my sincere thanks to all the members of the Council, and particularly to the Secretary, Mr. J. B. Hickson, for the attention and consideration they have bestowed upon all matters submitted to them, and the very loyal assistance they have accorded to me during the year.

I have now much pleasure in moving the adoption of the Report and Accounts.

Mr. C. J. Atkins seconded the motion, and the Report and Accounts were adopted.

## failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Feb. 23rd, was 160, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 96; Deeds of Arrangement registered, 64. The respective numbers in the corresponding week of last year were: Bankruptcies, 105; Deeds of Arrangement, 91—total, 196; being a decrease of 36. The total number of commercial failures recorded during the 8 weeks of the present year is 1,329; the total number recorded in the corresponding 8 weeks of last year was 1,453, showing a decrease of 124.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Feb. 23rd, was 161. The number in the corresponding week of last year was 176, showing a decrease of 15. The total number filed during the 8 weeks of the present year is 1,234; the total number filed in the corresponding 8 weeks of last year was 1,341, showing a decrease of 107.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Feb. 23rd, amounted to £3,373,339, by way of addition to £1,370,220, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,198,917, showing an increase of £2,174,422. The total amount registered during the 8 weeks of the present year was £12,202,335 (in addition to the issues in previous years by the same companies), as compared with £15,814,021 for the corresponding 8 weeks in 1905, showing a decrease of £3,611,686.

## The Profession in Scotland.

### COURT OF SESSION.

#### Edinburgh—Outer House.

(Before Lord DUNDAS.)

February 20.

**R. A. Craig v. J. Craig.**

*What constitutes unlawful Competition?—Chartered Accountant Sues his Brother and late Partner—Substantial Damages Awarded.*

Judgment was pronounced in an action at the instance of Robert Archibald Craig, C.A., 22 York Place, Edin-

burgh, against James Craig, C.A., 27 York Place. As assignee of James Aikman & Sons, leather and boot factors, Jeffrey Street, Edinburgh, the pursuer sued the defender for £95 19s. 5d. and £46 18s. 9d., and as an individual he sued for £1,000 in name of damages.

Lord Dundas decreed against the defender for payment to the pursuer of £130, and found the defender liable in expenses. This, he said, was a distressing case. The pursuer (aged 34) and the defender (aged 41) were brothers. Both were Chartered Accountants. They were partners under the firm-name of J. & R. A. Craig from 1894 to 1897, when the partnership was dissolved. Since then they had carried on separate businesses in premises which were situated in the same street. The pursuer's ground of action was that since the dissolution of the firm the defender had entertained the greatest ill-will and hatred towards the pursuer, and had sought every occasion to unlawfully molest and injure him in his business, and to interfere with him in the practice of his profession, which was his means of livelihood. Both parties courted the fullest inquiry, and the proof was of formidable dimensions. His Lordship had considered the case with great care and anxiety. It was impossible within reasonable limits to analyse the whole evidence in detail, or to advert to every point which made in favour of one party or the other. He would content himself with dealing as concisely as he could with each of the episodes upon which the pursuer founded in the order in which he had set them out upon the record, and stating for the benefit of the parties a sufficient outline of the reason upon which his conclusion in regard to each episode was based. With regard to the law of the matter, counsel for the parties were substantially at one. Competition between members of a profession or a trade was, of course, within limits, lawful, though it might result, and be intended to result, in loss or injury to one of them and corresponding benefit to another. But competition must be carried on by legal and not by illegal methods. The law did not in such questions regard motive. An act lawful in itself was not, his Lordship apprehended, converted by a bad or malicious motive underlying it into an unlawful act, so as to render the doer of it liable in an action of damages. It would not be sufficient for the pursuer, in order to recover damages, to show that the defender had acted towards him *malò animo*. He must establish that the injurious result to him of the defender's actings in all or in some one or more of the instances alleged was achieved by means which were in themselves illegal, and that the representations made by the defender to third parties, resulting in loss and injury to the pursuer, were untrue in fact to the knowledge of the defender, or, at all events, made by him recklessly and without sufficient justification. Dealing with the main points founded on by the pursuer, his Lordship said that



in 1898 the pursuer was employed by Mr. Murray, a client of his, and a creditor of the North British Agency Company, Lim., to recover a debt of £15 due by the company under a bill. The company failed to pay, the bill was protested, and the days of charge expired. On 12th October 1898 Mr. Murray presented a petition to the Court for the judicial winding-up of the company. In the petition the pursuer was proposed for appointment as liquidator. On 27th October the petition was called in Court, when counsel appeared and stated objections to the pursuer's appointment, and the Court named another gentleman as liquidator. The written instructions upon which counsel stated the objections were given to him by Mr. Ketchen, S.S.C. Mr. Ketchen on his part was acting upon written instructions given to him by the defender by letter dated 20th October, the contents of which were substantially embodied in Mr. Ketchen's instructions to counsel. This important letter, after referring to a "conversation," about which no very satisfactory explanation was given by the defender, and which Mr. Ketchen did not recollect to have taken place, bore to enclose a "mandate in your favour by Mr. James Watson, 14 Hamilton Place, authorising you to oppose the appointment as liquidator of the party named in the petition for liquidation of the North British Agency Co., Lim. Mr. Watson, besides being a shareholder, is a creditor of the company for £30, and it is believed by him that the petition for liquidation, though nominally at the instance of a creditor for £15 or thereby, is really at the instance of Mr. Hunter, the secretary and promoter of the company, and the liquidator proposed is his nominee. There are good grounds for inquiring into transactions in connection with the promotion of the company, and Mr. Watson believes that the inquiry will not be properly undertaken by a nominee of Mr. Hunter, and he would prefer that the Court should appoint an independent liquidator." It was, his Lordship said, untrue to say that Mr. Watson, who gave the mandate, was a creditor of the company; he was only a shareholder in it to the extent of £5. Further, it was conclusively proved by the evidence of Mr. Hunter and of the pursuer that the latter was in no sense or degree the nominee of the former. They had in fact only once met each other. It was upon these untrue representations made to the Court that the pursuer lost his appointment. The defender's answer upon the record was, his Lordship regretted to say, not, in his opinion, candid or true. He stated that he "was professionally requested to co-operate in endeavouring to secure the appointment of liquidator. The defender agreed to said request, and with that object approached certain shareholders in the usual way for mandates to support his nomination. The defender was successful in obtaining the support of

"certain shareholders." Now, the evidence by which these averments were supposed to be supported appeared to be that of (1) Gentle, a young clerk in the defender's office, who said that he got a list of the shareholders and canvassed some of them, and succeeded in getting some mandates for the appointment of the defender as liquidator; (2) Riddell, who obtained a mandate of some sort from Watson; and (3) the defender, who stated that the sole object of his intervention was to secure the liquidatorship for himself, and added that when he wrote the letter he was not aware that his brother was named in the petition, nor who the party named in it might be. The defender was specially challenged before the closing of the record "to state the names of the persons interested who asked him to co-operate with them, and to give the names of the certain shareholders whose support he secured." But at the proof not a single mandate could be produced, nor, what was more remarkable, could the defender or either of his clerks give the name of a single alleged mandatory except Watson. But the most striking fact, as bearing upon the truth of the defender's record, and of his evidence, was that there was no hint or mention of his own name as a candidate for this liquidatorship either in his letter or in Mr. Ketchen's instructions to counsel, nor was any mention of the defender made when the petition was moved in Court. His Lordship was unable to accept the view that the defender's actings in this matter were due to any desire or idea of securing the appointment for himself, or that he had been professionally requested to co-operate towards that end. He was forced to the conclusion that the defender was not really a candidate for the appointment of liquidator; that he desired to deprive his brother of it; that, with that end in view, he made statements to Mr. Ketchen which were in fact untrue, and which he had no ground for believing to be true; that the communication of these statements to the Court resulted directly in the pursuer losing the appointment, which he would otherwise, as a matter of course, have obtained; and that that loss was a matter which suggested substantial damages to the pursuer. In September 1900 the pursuer was nominated as liquidator in a petition by Colston & Co., Lim., for the winding-up of Fairbairns, Lim. On 27th September answers were lodged for John Baird, solicitor, Edinburgh, a shareholder in Fairbairns, Lim. In these answers objections were stated to the pursuer's appointment, and the Court appointed a gentleman of their own selection. The pursuer's case was that these answers were framed by the defender himself; that he inserted in them statements about the pursuer which were, to his knowledge untrue; and that he got Mr. Baird to sign and lodge the answers with the desire and the result of depriving the pursuer of the appointment. The evidence stood thus.

The pursuer stated that he was astonished when he saw these answers, and went and saw Mr. Baird about the matter. "Mr. Baird told me that the defender was the author of the answers. . . . Q.—Did Mr. Baird state to you that he had been induced to consent to the answers being lodged in his name? A.—He did. He expressed regret for it, and said he would go no further, and would not instruct counsel to support the answers." The pursuer also asked a friend, Mr. R. D. Monteith, who apparently knew Mr. Baird very well, to call upon the latter and endeavour to get him to withdraw the answers. Mr. Monteith did so, and he deponed: "Q.—Do you recollect what Mr. Baird told you about the answers? A.—Yes. He said he really knew very little about the thing—that it was Mr. James Craig who had asked him to put them in, and in point of fact that he had sent him the answers to lodge. Q.—Did he say they had been lodged at the defender's request? A.—Yes, and he was sorry, but the thing had gone too far, and he could not withdraw." Again: "Q.—Do you swear that he (Mr. Baird) said the answers were prepared by James Craig, or was it an inference you drew from what he said? A.—I swear he said so." These two witnesses were to a certain extent corroborated by Hastie, Mr. Baird's clerk. On the other hand, the defender swore that he heard nothing about the petition for winding up Fairbairn's, Lim., that he did not endeavour to find out anything about it, and that neither he nor anybody for him canvassed Mr. Baird or anyone else to lodge answers. In that state of the evidence, the crucial witness came to be Mr. Baird. Now, Mr. Baird, for some reason which his Lordship did not propose to have fathomed, chose to give his testimony in the most unsatisfactory manner possible. His general attitude was one of *non nemini*. He did, indeed, at parts of his evidence deny in terms that the answers were framed by the defender, or that the latter induced him to sign and lodge them. But again and again he permitted himself to reply in the affirmative to such questions as "May that have happened?" or "May you have said so and so?" even when such a supposition would be plainly inconsistent with his positive statements in regard to important points involved. That sort of evidence was most unsatisfactory, especially when given by a professional lawyer. Upon the whole, his Lordship considered that Mr. Baird's evidence, such as it was, must be held as going to support the defender's side in the conflict of evidence. The story was a strange one, and he had had great doubt in arriving at any decision. But his opinion was that the only safe and proper conclusion as regarded the episode was to hold that the pursuer's contention was not conclusively proved. The next matter had to do with the sequestration of one Higgins in August 1902. The pursuer was invited and agreed to become the trustee in Higgins'

sequestration, and at a meeting of the creditors on 9th September 1902 he was unanimously appointed trustee. The pursuer's ground of action was that the defender thereafter endeavoured by fraudulent and illegal methods to get him removed from the post. It appeared, however, that this endeavour—by whatever means compassed—signally failed, and his Lordship did not think that the pursuer had shown that he suffered any loss or damage in regard to the matter. In November 1903 the estates of Messrs. J. A. Dobbie & Co. were sequestrated. The pursuer was appointed judicial factor at the instance of Mr. Peddie, the largest trade creditor. It was also Mr. Peddie's desire that the pursuer should become trustee in the sequestration. In this case it appeared that the defender did not want the trusteeship for himself, but he was asked by another gentleman who was to be a candidate for it to support and assist him. The defender agreed to do so. It was not, his Lordship thought, true to say, as the pursuer did, that the defender proffered his services. His Lordship held in this matter that the defender did, in fact, procure the deprivation of his brother for the time being of the trusteeship, and that he intentionally adopted illegal means to that end. It followed that the pursuer was in his judgment entitled to damages. The next topic was concerned with the affairs of William Simpson, boot-maker, Leith and Loanhead. These affairs Simpson placed in the defender's hands in January 1904. Whether or not there was also a trust deed in the defender's favour was matter of dubiety. It appeared that the pursuer desired to get William Simpson's affairs into his own hands. He arranged with Simpson to go to Glasgow with him on 18th January 1904 to interview the Glasgow creditors. But on that day Simpson instead travelled to Glasgow with the defender, and they went together to the former's brother, George Simpson. The outcome of the visit was that the defender returned to Edinburgh, armed, as he alleged, with instructions to consult counsel, and if counsel should so advise, to institute proceedings at the instance of William Simpson against Messrs. Aikman & Sons, and also a separate action against the present pursuer at the instance of George Simpson. The object of the proposed litigations was to affirm that Messrs. Aikman had, through the alleged instrumentality or with the connivance of the pursuer obtained an illegal preference over Mr. Simpson's other creditors when he was (in 1901) in an embarrassed condition, and had made arrangements with his creditors. The defender certainly obeyed his instructions with great alacrity. The same evening (18th January) he consulted counsel verbally, and two proceedings were immediately set afoot in William Simpson's name against Messrs. Aikman. Both of the actions were departed from by William Simpson before the date upon which proof had been fixed, and Messrs. Aikman were, of course, found

entitled to expenses. The pursuer felt so keenly about the averments made in these proceedings, so far as affecting himself, that he took an assignation from the Aikmans of the sums to which they had been found entitled in each action, and all their "right, title, and interest in and to the premises." By the form in which the present summons and condescendence were framed, his Lordship thought that the pursuer had definitely confined himself, as regarded this part of the case, to the recovery, if possible, of the two sums of £95 19s. 5d. and £46 18s. 9d. respectively, for which he specially sued as assignee of the Aikmans upon the ground that in both actions the defender was the *verus dominus litis*, and was therefore bound to reponne the pursuer in these sums, which he had had to pay to the Aikmans. In his Lordship's opinion the pursuer's case upon this point failed. The plea of *dominus litis* imposed a heavy *onus* upon him who attempted to establish it. He must in order to succeed prove that the alleged *dominus* was truly the principle in the action, and that the actual litigant was merely his agent. That, in his Lordship's judgment, the present pursuer had not sufficiently made out. From the inception of the proceedings in question Mr. Peter Clark, solicitor (who seemed to give his evidence with becoming candour), deponed that he had all along the usual and proper control and conduct of the cases, subject to the instructions of his client. As regarded the defender, Mr. Clark deponed: "I 'never in any way regarded him as my client in these 'actions, or looked to him for payment of my account. 'He had nothing to do with the control of these actions.'" Wm. Simpson's consent to the abandonment of both proceedings was caused, Mr. Clark deponed, by want of funds. In these circumstances, his Lordship thought that the pursuer's case that the defender was the *verus dominus* was not made out. It was true that Wm. Simpson in the witness-box did not impress his Lordship as a dominating personality, but the reverse. It was also true that the defender's attitude towards his brother in this matter indicated an unfriendly disposition, and a willingness (to put it no higher) that these actions should be set afoot with all speed. But these considerations did not affect his Lordship's conclusion upon the legal aspect of the question. It was, he thought, right and fair to add—although in the view which he took it was unnecessary to decide, and he did not decide the point—that as at present advised he saw no reason to suppose that as matter of fact there was any illegal preference granted in favour of Aikmans in 1901, or that any imputation of misconduct could justly be made against the pursuer in regard to anything that he had done or was concerned in in connection with Simpson's affairs at that time. It remained to consider the pursuer's complaint against the defender in regard to an action at the instance of George Simpson, grocer,

Cathcart, against the pursuer. That action was thrown out in the Procedure Roll as being irrelevant. The present pursuer recovered his expenses from George Simpson. But he complained that, in this matter, he discerned the hand of his brother, ever seeking to strike a blow at his career and his business reputation. The action had regard, in a somewhat different aspect, to the alleged illegal preference obtained by certain of Mr. Simpson's creditors in 1901, and to the pursuer's actings at that time. The evidence upon this head of the case had caused his Lordship considerable doubt and anxiety. The origination of George Simpson's action presented some strange and exceptional features. It appeared that on 18th June 1904, when the defender accompanied William Simpson, in relation to the latter's affairs, to see George Simpson, that gentleman learned for the first time of the alleged illegal preference in 1901, and conceived the idea from what his brother said—or more probably from what was suggested by the defender—that he might have a ground of action against the pursuer, which, according to the judgment above referred to, it seemed he had not. Apparently it was arranged that the defender's consultation of counsel as to William Simpson's chances of success should include George Simpson's prospects also. Now, the defender's subsequent energy and, indeed, precipitation, in setting afoot George Simpson's action against the pursuer, were not, to his Lordship's mind, pleasant topics of reflection. The summons which seemed to have been typed in the defender's office was actually served upon the pursuer the very next day, 19th January, and that without the smallest note of warning or opportunity for explanation. It was difficult to understand such conduct by one brother towards another, except upon the footing that ill-will and intention to injure lay behind it. But his Lordship hardly saw his way to affirm that the defender's actings, however unfriendly, were such as to subject him to liability in damages, which was the point here at issue. The case was placed in the hands of agents and counsel, who, George Simpson said, advised that there was a good case. The agent communicated regularly with his client, who stated that he read and approved the statements made upon his record, and that, after the meeting on 18th January, he had nothing to do with the defender in the matter. His Lordship did not think that there was room upon the evidence for holding that the defender could be held responsible for any statements made in George Simpson's action, which might be untrue and injurious to the pursuer. Finally, with regard to certain circulars which were issued by the defender to the creditors of William Simpson, and which were brought in by the pursuer as matters of complaint, his Lordship could not see his way to holding it to be proved that, if and in so far as they contained statements injurious to the pur-

suer, these statements were, in fact, untrue in the knowledge of the defender, or were published by him at his own hand in utter recklessness as to their truth or falsity. In regard, therefore, to these matters, his Lordship said he found no legal ground for awarding damages against the defender, although, as he had said, these matters (especially the facts in connection with the raising of George Simpson's action) were, to his mind, of a distinctly suspicious character, and indicative of a hostile attitude upon the part of the defender towards his brother. The assessment of damages in such a case as this could not, of course, be made upon any close and precise calculation. The damages must, he thought, clearly be of substantial amount, but not, of course, of a vindictive character. Upon the best consideration which he could give to the matter, he believed that the justice of the case would be met by an award of £130.

### Edinburgh—Outer House.

(Before Lord JOHNSTON.)

February 22.

**J. W. Marshall and another v. D. A. Rhind and others.**

*Company Law—Vendor's Obligation—Directors' Power to Write off same—Transaction Ultra Vires of the Company.*

The Lord Ordinary gave his opinion in the action by James Wallace Marshall, residing at Carlton, Upper Largo, and John Downie Morris, tea agent, 2 St. Andrew Square, Edinburgh, against David Allan Rhind, wine merchant, Leith, and Alexander Erskine Bell, hotel-keeper, Crown Hotel, Blairgowrie, the present directors of D. A. Rhind & Company, Lim., Quality Street, Leith. Two former directors of the company, William Thomson, W.S., 23 York Place, Edinburgh, and Thomas John Ferguson, 7 Lothian Bank, Eskbank, were also called as defenders. The pursuers asked an order on all the defenders conjointly and severally to pay or refund and restore (1) the sum of £5,574 6s. 3d., and (2) the sum of £4,141 12s. 4d.

Lord Johnston said the company of D. A. Rhind & Company, Lim., was formed in 1897 to acquire the business of D. A. Rhind & Company, whisky blenders and wine and spirit merchants, Leith, and of David Allan Rhind, the sole partner. A provisional agreement had been entered into on 26th May 1897, under which David Allan Rhind undertook to act as managing director of the company for ten years to hand over to the company £6,000 in cash, and, as he was sole partner of the firm, to guarantee the book debts at the amount specified, and to pay the whole

preliminary expenses of the company. Mr. Rhind failed to hand over to the company £6,000 in cash, and there was a slight deficiency in the book debts to be handed over by the firm, the result being that, allowing for certain *per contras*, Mr. Rhind, at 11th December 1897 was due to the company on these heads £5,574 6s. 3d., first mentioned in the summons. In the next place, Mr. Rhind did not pay the costs of promoting the company or the interest upon the bill, and these sums, with certain further items, raised a debit balance against him on his private account amounting to £4,141 12s. 4d., which was the second sum mentioned in the summons. The company was not successful, and in May 1903 the capital of £50,000 was reduced by £18,000. In these circumstances, the transaction complained of was as follows:—The board of directors, who at that time consisted of Mr. Rhind himself, of Mr. Thomson, W.S., a partner of his agents in the flotation of the company, and Mr. T. J. Ferguson, on 2nd November 1903 resolved that such debts as were bad at 18th May 1903 should be written off, and that a Reserve Account should be opened for the unappropriated part of the £18,000 by which the capital had been reduced. Further, they thereupon caused to be written off the two sums above mentioned due to the company by Mr. Rhind and returned him his bill for the first of these sums, and retransferred to him the 2,000 ordinary shares held in security. Thereafter they treated Mr. Rhind as freely discharged of the two sums. These facts were all admitted by the defenders. It seemed to his Lordship very plain on the surface of the facts as they were admitted that Mr. Rhind, vendor to the company, and its managing director, had received a gift of part of the company's assets, which it was beyond the power of the company to make. The object of the company was primarily to carry out the agreement entered into with him and his firm in May 1897. One of the terms of that agreement was that he should hand to the company in cash £6,000. He had not done so. The directors had, without consideration, discharged him of his obligation. They had no more power to do so than, had he paid the sum, to return him the money, and equally the majority of shareholders had no power to homologate such acting on the part of the directors. And any individual shareholder was entitled to appeal to the Court for redress. Assuming the act in question to have received the assent of the company in general meeting, his Lordship was of opinion that no articles of association could be effectual to prevent the impeachment or questioning of an act which was *ultra vires* of the company. Accordingly, he had come without hesitation to the conclusion that the transaction was *ultra vires* not merely of the directors, but of the company as regarded the first item mentioned in the summons. The second item stood in a slightly different position, inasmuch as Mr. Rhind's obligation did not rest

so directly on the initial agreement which it was the object of the company to carry into effect. But nevertheless was it a gift to Mr. Rhind, without consideration of assets of the company, and therefore his Lordship thought the difference was without substance. He had failed entirely to understand the excuse of the directors that they were made in the interest of the company. It might be a question whether it was in the interest of the company to sue Mr. Rhind and force him into bankruptcy. But it was one thing for the company to give Mr. Rhind time and keep him on his feet, and it was another thing to release him altogether from his obligation and to return his security, such as it was. His Lordship's only difficulty in disposing of the case was as to whether the pursuers had adopted a proper form of remedy. Setting aside at present the question whether any liability attached to Mr. Bell, all the pursuers could require was the restoration of the *status quo ante*, that was, the restoration of Mr. Rhind to the position of being debtor to the company on bill for the first sum in question and granter of a transfer in security of 2,000 of his shares, and debtor to the company on open account in the second sum in question. Before, therefore, finally pronouncing judgment he desired to hear parties on that matter.

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(Page 190)

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### Leading Articles.

#### Informal Deeds of Arrangement.

IN our last issue there appeared two letters, presumably referring to the same matter, which, if there be no misunderstanding as to the facts, disclose a position of affairs which is highly irregular; and the fact that those affected would appear to have no very adequate remedy, is another instance of the extremely unsatisfactory state of the law with regard to deeds of arrangement.

Assuming the accuracy of the facts stated by our two correspondents—and as no names are mentioned there can be no possible harm done, even if this assumption should prove to be unwarranted—it would appear that a debtor, finding himself in difficulties, went to his largest creditor and disclosed to him the position of affairs; and the largest creditor accordingly instructed his accountant, who (no doubt with the concurrence of the debtor) sold the assets for what they would fetch, and then proceeded to distribute the proceeds among the creditors, who then hear for the first time that their debtor is in difficulties. If the facts approximate to this account, it is clear that the creditors who were not consulted have ground for serious complaint, and that the accountant has placed himself in a position of considerable danger, and one which—questions of legal liability apart—most professional men would not care to occupy.

There can be little question in such a case as this that the creditors who have been kept in the dark, or any one of them whose claim is of sufficient magnitude, could without difficulty obtain a receiving order against the debtor. If there has been nothing in the nature of a deed of assignment the position would appear to be either that there has been a voluntary conveyance of the assets by the debtor to the accountant, which would be void in the event of bankruptcy, or else if no such conveyance could be established, then in the alternative the accountant can apparently not establish even this shadowy title to interfere with the debtor's property. Under such circumstances the dissatisfied creditors may possibly proceed to bankruptcy, and then bring an action against the accountant for the recovery of the assets and for damages for wrong-

ful conversion. They might also be able to join the largest creditor as a co-defendant, but upon that point we feel more doubtful.

So much for the dangers attending the position into which the accountant has allowed himself to be drawn. With regard to the professional aspect of the matter, while we can entirely sympathise with any reasonable desire to avoid unnecessary red-tape, we need perhaps hardly point out that the somewhat elaborate rules and regulations obtaining for the winding up of insolvent estates are at all events grounded upon the recognised requirements of the situation as viewed from the point of view of the protection of the public, the protection of the creditors, and the protection of the debtor. Taking the debtor first, he has apparently been stripped of his property under such circumstances that he is at least entitled to a release from his liabilities; but as a matter of fact no step whatever has been taken to protect him against proceedings from his creditors, and in the event of bankruptcy the debtor would no doubt be held to have committed such offences as to preclude the possibility of his obtaining an immediate discharge. From the point of view of creditors generally, the facts having been withheld from them they have not been afforded the opportunity, to which they are entitled, of having a voice in the winding-up of the estate and in the payment of the trustee. They have no guarantee that all the assets of the debtor have been handed over to the accountant; they have apparently received no account from the latter disclosing his dealings with the estate; neither have they any assurance that the available moneys have been or will be distributed among the creditors according to their respective rights and interests; nor have they

any guarantee that the claims of all persons admitted to rank as creditors are just. Moreover, the very fact that there has been such concealment naturally suggests the necessity of inquiring whether any motive therefor exists—such, for instance, as a fraudulent preference, a voluntary conveyance, or other similar voidable transaction. Indeed, unless the whole case is hypothetical, or the facts are materially misstated, it seems to us that the conduct of the accountant concerned is not only reprehensible from a professional standpoint, but is untenable from the point of view of the law.

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#### Gas Companies and Depreciation.

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WHILE entirely agreeing with our correspondent "Enquirer," whose letter we reproduced last week, that the corroding influence of time cannot be restrained by Act of Parliament, we do not follow him in the deductions that he draws from this truism. Gas companies and similar undertakings have to face a problem very different from that of the ordinary commercial company. The latter has not to arrive even approximately at true net profits, but at a figure which it is safe to regard as profits legally divisible; and having arrived at that figure it does not at all follow that the whole amount thereof will be so divided, and the shareholders, as such, have no right to have the admitted profits divided among them *pro rata*. In the case of gas companies, however, the consumers as well as the shareholders are interested in the profits, and it therefore becomes necessary to ascertain what the profits really are. It is absolutely impossible to ascertain the true net profit of any going

concern, and consequently a conventional basis has to be fixed and substituted for the true facts. As we understand the law relating to the subject, it seems clear that, apart from actual payments in respect of repairs and renewals, no expenditure on plant or machinery can be properly debited to Revenue Account, but that with a view to equalising the charges against Revenue in successive years it is permitted that a so-called Reserved Fund may be maintained out of which any unusually heavy payments may be made, instead of charging them against the profits of the year in which they take place. There is nothing in the Acts or in the special requirements of the situation which could possibly justify the debiting to Revenue of Capital Expenditure upon new works, and such a practice can, in our opinion, only be described as deliberate falsification of the accounts. Of course, it goes without saying that the Reserved Fund prescribed by Section 31 of the Gas Works Clauses Act, 1847, is a different thing altogether to the Reserve Fund of the ordinary commercial company (although with regard to the latter the term is, we think it must be admitted, sufficiently vague); but upon such a point as this it is at least competent for the Legislature to enforce its wishes. The nature of the account has been clearly described, and a name has been provided for it. Just because we may have our own opinion as to the suitability of that name is no justification for our breaking the law. It would be interesting if our correspondent would tell us whether his inquiries upon this subject are purely theoretical, or whether he has in his mind any company which keeps its accounts upon the method which he would appear to be desirous of defending.



### Secret Reserves.

THE recent alteration in the articles of association of the Birmingham Small Arms Co., Lim., enabling the directors to create a secret reserve to the extent approximately of half the annual profits of the company, reminds us that owing to an oversight we have so far omitted to comment upon the able paper upon the subject read by Mr. STEPHEN TRYON, F.C.A., at a recent meeting of the Bristol Chartered Accountants' Society, and reproduced in our issue of the 30th December last. Mr. TRYON's paper is short (occupying a bare two pages of print), and it therefore does not, of course, profess to deal anything like exhaustively with the subject, yet at the same time it explains a point which, so far as we remember, has not been made clear by previous lecturers.

To some extent a reserve may be created by deliberately undervaluing assets, or by including among the liabilities in the Balance Sheet credit Ledger balances which do not in fact represent any indebtedness upon the part of the company. In certain cases—as, for instance, when the business premises are written down to a nominal figure—there is not much secrecy about a reserve of this description, but in the case of a growing bank, having numerous branches which are continually being added to, it is clear that a substantial reserve might be effectively concealed behind an undervaluation of business premises. Similarly, an excessive provision for bad and doubtful debts, or the valuation of investments at far less than their market price, or the addition to Sundry Creditors of a sum which does not represent any outstanding liability, are all forms of secret reserve which, in point of fact, are very largely used by many undertakings other than those

which obtain special powers in their articles of association. Of course, it is needless to say that such reserves could not have been created without in the first instance charging something against Revenue which did not represent an expense *bonâ fide* so chargeable. If, therefore, a detailed Revenue Account were published there would be an end of the secrecy with regard to the whole matter; but it is, of course, quite unusual for such accounts to be published, and in the majority of cases, where they are printed at all, they are so framed as to be quite useless for the purposes of supplying detailed information as to how the present position of affairs has been arrived at.

The form of Secret Reserve contemplated by the Birmingham Small Arms Company, Lim., and also referred to by Mr. TRYON as being his idea of a really *secret* reserve, is, however, somewhat different. It contemplates not so much a series of book entries which may deceive those inspecting the accounts as to the true balance of realised profit, to the end that they may be induced to be content with a comparatively small dividend, thus allowing undivided profits to remain in the business without their existence being disclosed, but rather it aims at taking these profits out of the business and investing them elsewhere before the accounts are compiled. The accounts are then drawn up so that what is in fact an investment of money may appear to have been an expense, while the existence of the investment itself is entirely suppressed. Or, in the alternative, the arrangement may be that some of the gross revenue is attached before it is actually brought into the coffers of the company, so that instead of the accounts showing fictitious expenses they show a gross revenue smaller than that actually earned.

It seems to us that all such transactions differ only from the offence known to the criminal law as the falsification of accounts in that the motive is a good one. So far as the accounts go the operation is undistinguishable, but the end sought to be arrived at is not the personal benefit of those who are parties to the incorrect or incomplete record of the transactions, but rather the ultimate benefit of those by whom they are employed.

If these latter are willing to constitute the directors trustees for their advancement under such circumstances that whatever happens they will never call for an account, and if they go still further and make it a condition of the trust that under all circumstances such an account shall be withheld, there would appear *prima facie* to be but little for other persons to complain about. On the other hand, we very much question whether any majority of shareholders can take away from a minority such protection as may have been afforded to the latter by statute. Every shareholder is supposed to know the contents of the articles of association before he becomes a member, and is thus held to be bound by those articles, but although, speaking generally, the articles can be altered from time to time by special resolution, they can only be altered within the limits which it is competent for the company to provide for by its articles. For our own part, we are by no means satisfied that it would be safe for an auditor to assume that any clause in a company's articles of association could absolve him from referring to the existence of a Secret Reserve. We are inclined to think that in all cases where the accounts do not fully disclose the position of affairs, the auditor's report must be modified accordingly, but if the accounts are in accordance with the terms of the articles of

association there would appear to be no reason for modifying the usual statutory form of certificate.

In his paper Mr. TRYON expressed himself frankly as being opposed to Secret Reserves altogether, and to a large extent we are inclined to agree. At the same time we cannot ignore the fact that a very large number of the most capable directors take a different view, and the question is largely one of financial expediency, and thus rather a question for them than for the auditors. There would appear to be no inherent difficulty in an auditor safeguarding himself by referring to the existence of a Secret Reserve without making any undesired disclosure as to its magnitude. At the same time, we feel convinced that if ever the practice extends to companies whose directors are other than perfectly honest and straightforward, the inherent evils of this policy of deliberate concealment will be at once made evident in such a way as to bring about an immediate revulsion in public opinion on the subject.

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### Weekly Notes.

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#### The Audit of Municipal Accounts.

In another column of this issue will be found a full report of the important conference convened by the Municipal Trading Committee of the London Chamber of Commerce on the 5th inst. The Institute was represented by Mr. Frederick Whinney and Mr. W. B. Peat.

#### Insurance Companies and Government "Audit."

In the House of Commons last week Mr. Field asked the President of the Board of Trade whether he would consider the advisability of arranging an annual official audit of the manner and securities in which the capital funds of British insurance companies

are invested; also as to whether he would inquire into the expediency of establishing a Government guaranteed insurance company enabling a moderate system of premiums for fire, life, and accident insurance on the lines of an institution carried on by the responsible Government in the New Zealand Colony. Mr. Lloyd George said that while he thought there was a good deal to be said for the first suggestion and would consider it, he was afraid that he could not advise the adoption of the far-reaching proposal suggested by the hon. member. If the President of the Board of Trade will inquire in the right quarter he will find that there is a good deal to be said on the subject of Government "audit"! He might make a start at New York.

**The Use of the word "Bank."** The remarks of Sir Alfred Newton in a recent case at the Guildhall, to the effect that the word "bank" was used by many concerns in an unwarranted manner, has led to the suggestion being again put forward that banks should be brought into line with insurance companies, and a deposit of £20,000 made a condition precedent to the use of the word and the commencement of business. There can be no doubt that many persons are dazzled and misled by the word itself, and if this suggestion were adopted, the financial adventurers would be stopped in this direction at any rate.

**Inland Revenue and Stock Receipts.** It is well known that transfers of Inscribed Stocks are effected by an inscription by the transferor, or the attorney appointed by him, in the books of the financial institution keeping the stock, but it is usual to issue a stock receipt after this procedure has been gone through which is merely a memorandum of the transaction for the benefit of anyone who may be interested. The Inland Revenue authorities, with characteristic zeal, have decided that these stock receipts must bear a penny stamp. When it is remembered that all Inscribed Stocks have compounded the transfer fees at a fixed rate per annum, the action appears to be a little high-handed.

**Bank Notes and Joint Stock Banks.** A curious point in connection with Bank of England notes was mentioned in the House of Commons last week, when Mr. McKenna (Secretary to the Treasury), in reply to a question put by Mr. Kennedy, said that he was aware that joint-stock banks were under no legal obligation to negotiate notes of the Bank of England. He added that he did not

think it would be reasonable to impose such an obligation upon them, seeing that it would involve the keeping of cash reserves to meet any Bank of England notes that might be presented.

**The reproduction of Students' Societies' Lectures.** We think it desirable that our readers should be made acquainted with the reason why we have been unable to reproduce in these columns certain lectures which have been delivered at Students Societies' meetings, as in the absence of some such explanation these omissions might easily give rise to a misunderstanding. The facts are that our contemporary *The Accountants' Magazine* has of late written to Chartered Accountants whose names have been announced as lecturers at future meetings with a view to securing a copy of such papers for insertion in its columns; but lecturers who thus give permission for the reproduction in a Scottish paper of their lectures, doubtless, in no case intend to do more than to allow such publication in addition to publication in these columns, in the columns of *The Accountants' Journal*, and in the "Transactions" of the Society before whom the paper is read. They appear, however, to have overlooked the fact that if *The Accountants' Magazine* can succeed in being the first to reproduce the lecture, it thereby acquires the copyright, unless such copyright has been expressly reserved by the author. The result is that neither the Union of Students' Societies, *The Accountants' Journal*, nor ourselves, can subsequently publish such a lecture without incurring the risk of an action for infringement of copyright. We hardly think it necessary for us to comment upon these circumstances further than to explain to all whom it may concern that where they have allowed the Scottish paper to acquire the copyright, subsequent reproduction of the lecture in our columns may not always be possible. Lecturers and Secretaries of Students' Societies would do well, therefore, to bear in mind that if they think it desirable to allow *The Accountants' Magazine* to reproduce their lectures, it is important that they should expressly reserve the right for their reproduction elsewhere. In view of the fact that the Secretaries of Students' Societies in the majority of cases only hold office for a year, we would suggest that the Committees of these various Societies pass a standing resolution giving instructions with regard to the matter, so that the benefit of the lectures delivered at their meetings may not be lost to the majority of the profession through an oversight upon their part.

**Competition  
between  
Accountants.**

While the subject of our leading article of the 24th ult. is still fresh in the minds of our readers, we would like to direct attention to the report of the case of *R. A. Craig v. J. Craig*, which appeared on pp. 283-7 of our last issue. We do not, of course, suggest that this is a normal case, showing no more than the usual competition between Chartered Accountants in Scotland, but it undoubtedly throws an interesting side-light upon the question that we have already raised, as does also his Lordship's ruling that competition between members of a profession is, of course, within limits lawful, though it may result, and be intended to result, in loss or injury to one of them, and a corresponding benefit to another. Doubtless this represents the law with regard to the matter, but any occupation which claims to rise to the dignity of a profession must certainly submit itself to a stricter discipline, and in this connection, as we have already pointed out, public opinion as to what is fit and proper seems to be different upon the two sides of the border.

**Telegrams by  
Telephone.**

It is probably not nearly so well-known as it should be that subscribers to the telephone systems in London can send telegrams containing thirty words for the sum of 3d., the usual express messenger fee, by ringing up the post office nearest to the intended destination and transmitting the message there by means of the telephone. There is, of course, a somewhat increased risk of mistakes, but on the other hand there should be a clear saving of time, which is often of considerable importance apart altogether from the question of cost. The chief drawback to the system is, however, that only quite a small number of the London post offices are fitted with the telephone service, and therefore the regulation, useful as it is, is naturally at the present time greatly restricted in its operations.

**The London  
and Globe  
Liquidation.**

Mr. H. Brougham, the Senior Official Receiver and Liquidator of the London and Globe Finance Corporation, Lim., has recently issued his final report on the liquidation and the summary of accounts accompanying his application for release. The accounts show gross receipts amounting to £515,194 on assets estimated by the directors to be worth £2,901,020. From these receipts are deducted payments to redeem securities £290,317, and remuneration to voluntary liquidators £3,000, leaving a net realisation of £221,877. The total costs

have been £37,495, including £24,978 law costs, £4,696 Board of Trade and Court fees, and £6,289 special manager's charges. The fee for preparing the statement of affairs was £350, probably the largest sum ever awarded for that purpose. The amount distributed among creditors was £184,367, representing four dividends amounting in all to 1s. 5½d. in the £ on the unsecured claims, and, of course, shareholders receive nothing. One of the most remarkable features is the enormous discrepancy between the valuation of the company's assets according to the statement of affairs and the amount actually realised. Of course, with an Official Receiver as liquidator this absurd inflation of assets does no harm, but when a professional liquidator is appointed it not infrequently materially affects the amount upon which he is called upon to give security, and in consequence the amount that has to be paid on the liquidator's bond. It would be an excellent rule, as tending to discourage wholesale inflation, if those responsible for the statement of affairs were liable to pay the cost of the liquidator's bond to the extent to which it might be shown to have been provided in excess of the requirements of the situation on the faith of their over-estimate.

**Equalising**

Our contemporary *The Municipal London's Rates. Journal* has lost no time in giving effect upon paper to the announcement in the King's Speech as to the intention of the Government to introduce a Bill for the further equalisation of rates in London. According to our contemporary, the cause of the trouble would appear to be that the rich boroughs are paying less than their share towards the total cost of London government. The crux of the whole matter would appear, however, to be, what is their share, and whether in equity there is any reason why they should pay for the extravagance of other authorities, if extravagances there be. It is stated that there are only six boroughs paying approximately what they ought to pay, but as the rates of these vary from 7s. 2d. to 7s. 3d. in the £, it will be seen that, regarded from the standard of what was thought reasonable a dozen years since, even these boroughs are highly rated; 6s. 8d. in the £ used to be thought a fair rate at one time. Now the only boroughs rated at less are Kensington, Paddington, and certain parishes in Holborn and Westminster. In many cases the recent increase of rates is due to financial incompetence on the part of the local authorities concerned, which has been greatly fostered by the system of grants in aid—that is

to say, by giving to each authority moneys to spend for the collection of which it has been in no way responsible. Any further extension of this system would merely aggravate the evil. What is wanted is, we think, a removal of certain duties now falling upon the local boroughs to a more central authority, upon the principle that the cost of these services should be borne by London as a whole, and that, therefore, the expenditure must be similarly controlled.

#### Income Tax Touts.

Our attention has been drawn to letters appearing from time to time in the columns of our contemporaries from persons or associations who sometimes, under cover of discussing an income-tax point of genuine interest, profess to be willing to give gratuitous advice and assistance to persons who consider themselves to be over-assessed. From time to time such letters have also reached us. So far as they emanate from the ordinary type of so-called associations they are, of course, as undeserving of consideration as any other touting circular, but it is to be regretted that these methods of advertising appear to commend themselves to some associations or societies in which accountants, both Chartered and Incorporated, are interested. Under the circumstances, we think it would be well if the Councils of both bodies would issue an official announcement that the assistance of clients in income-tax matters is accountancy work, and, therefore, an improper subject for either direct or indirect advertisement.

#### Debentures Convertible Into Shares.

The recent decision of the House of Lords in the *Jarrah Timber Company's* case, declaring an option given to debenture-holders to convert their bonds into shares to be void, as a cloak on the mortgagor's right of redemption, appears *prima facie* to put an end to a class of operation which had much to commend it in certain cases—as, for instance, when the future outlook was speculative, and the need arose for additional capital, it became necessary both to offer reasonable security in case such further capital did not produce the results anticipated, while at the same time providing a reasonable inducement to lenders in the shape of a fair share of such profits as might be earned in the future. Our contemporary *The Law Journal* in a recent issue pointed out that the requirements of such a position might easily be met, without infringing the terms of the decision already quoted, by giving the bearer or registered holder of such debentures, as the

case might be, the option to exchange his holding for shares, not indefinitely, but at any time before the principal moneys secured thereby had been paid off. Such a clause would clearly except the bargain from the decision in the *Jarrah Timber* case, but it would not in all instances satisfy the reasonable requirements of lenders, in that the company would naturally be aware of its own position before the debenture-holders, and might thus exercise the right to pay off before they had a reasonable opportunity of exercising their option. Even this difficulty might, however, be got over by issuing the debentures for a term of years sufficient to clearly determine whether or not the option to apply for shares in substitution was of any value.

#### The Rights of Dissentient Shareholders.

*Apropos* of the *Nile Valley* case, which we mentioned in these Notes last week, the following very interesting letter appeared in a recent issue of *The Financial Times* :—

SIR, — The decision of Mr. Justice Kekewich in *Bisgood v. Nile Valley Company, Lim.*, commented upon by your learned legal contributor in your issue of Saturday last, is in accordance with the views which I ventured to express a few years ago in your columns. By this decision the statutory rights of dissentients—which it seems to be part of every reconstruction scheme to attempt to undermine and take away—have acquired a fresh lease of life. How long these rights will continue will depend on the ingenuity and determination of those who think that Section 161 of the Companies Act, 1862, ought to be done away with altogether. Personally I doubt the advisability of depriving dissentients of their right to dissent under the section, and I feel sure in any case that this cannot be effected by the method suggested by your contributor—namely, by providing against the exercise of the right by clauses in the memorandum of association. Numerous cases have already decided that you cannot take away the right by the articles of association, and I see no difference in principle between the articles and the memorandum for this purpose. As to reconstructions generally, and without reference to the case mentioned, I should say that if shareholders were not so extraordinarily lax in sending their proxies to directors, 90 per cent. of the reconstructions would, deservedly, never see the light of day, in which event shareholders would save themselves untold money and misery, and poor Section 161 would rest peaceably on the Statute Book.—I am, &c.,

SOLICITOR.

London, E.C., 26th Feb.

#### The Disclosure of Profits and Depreciation.

At a recent company meeting a shareholder, after complaining that too little information was given in the published accounts as to how the profits had been made, said

that he would ask what was the qualification in the auditors' report, where they said "subject to provision being made for depreciation." He took it that when the report was made, and a certain provision had been made for depreciation, the subject of depreciation should not have arisen in the auditors' minds. He considered the auditors should have been satisfied as to depreciation, because in a business of this kind the difference between one man's opinion as to depreciation and another's might make a very considerable difference. In his reply the auditor is reported to have said that to set out departmental profits would be most unusual and undesirable. The general expenses, directors' fees, bad debts, law charges, and so on were shown, everything being detailed except the labour of manufacture and the raising and selling of coals. Anything further detailed would be only detrimental to the company. As to the depreciation, the Balance Sheet was certified before the directors decided as to the rate of depreciation. The date of the certificate was the day before the directors met to consider the report, and at that meeting they decided to provide £18,000 for depreciation. They had, however, previously written telling him what they proposed to do, and he had approved, considering £18,000 to be a liberal depreciation, being practically 4 per cent. on the amount at the debit of capital expenditure, including lands and buildings. The company's Balance Sheet would compare well with 99 per cent. of those they were in the habit of receiving from industrial concerns.

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### Income Tax.

*(To the Editor of The Accountant.)*

SIR,—I have read with interest the communication of Mr. James E. Costello, appearing in your current impression, in which he dissents from the main points

of my letter of the 13th inst., basing such dissent in the chief issue upon an interpretation of the fourth rule which he quotes in full.

I may say at once that I advisedly abstained from reference to case or statute because I am unable to feel that the question involved in the assessment of John Brown, Junr., is in any way governed thereby, for it seems clear that, although a statute may be inelastic as far as it goes, it will rarely be entirely comprehensive, a proposition which the extensive prevalence of litigation and general principles of "abstract justice" seems to attest; and recognising this, I think that the case under consideration cannot be brought within the meaning and contemplation of the rule quoted.

Therefore, I find myself at present unable to accept any other view than the one which approximates most closely to just and true principles of accounting, and the exercise of which will not operate to assist persons of dishonest tendencies, to the detriment of the revenue and the relative increase of burden thrown upon others.

In conclusion, I observe that Mr. Costello takes exception to the reasoning in regard to capital and its investment, and I should just like to point out that I preceded the argument as follows:—

"The logical, if not the strictly literal, position has, in cases such as this, always appeared to me to be as follows."

I am not prepared to admit in any way that my reasoning in this regard was "tallacious," but I will readily concede that it is not literally in order, because it by no means necessarily follows that variation of investment will produce assessable income either immediately or at all. The purpose for which the reasoning was used was, of course, for a layman's illustration, and I maintain that, approached from that standpoint, it is sufficiently explicit.

I am, Sir, your obedient servant,  
27th February 1906. HERBERT EDWARDS.

*(To the Editor of The Accountant.)*

SIR,—Referring to my letter in your issue of February 24th last and your comment thereon, I must confess I do not see the application of your remarks as to the "Rules as to Amalgamations."

You do not, however, answer the specific question contained in my letter asking where any authority is to be found in the Income Tax Acts for the practice of Inland Revenue officials referred to. May I ask you if you will be so good as to state where in any of the Income Tax Acts such authority may be found?

In his letter in your issue of the same date Mr. Costello has very ably set out the proper position in the case under discussion; and the hypothetical case suggested by him, of an outsider taking over the business and discharging the manager, appears to me to demonstrate effectively the absurdity of the practice of Commissioners, which—until I am shown the authority in the Acts for the view they take—I venture to say is illegal.

Mr. Hill's letter in your issue of last week affords an example of the course of action of the Board of Inland Revenue which is more consistent than either legal or equitable. Their consistency, however, lies in their constant reading of the Acts against the taxpayer, and their frequent reading *into* the Acts things which exist nowhere in them. In the case Mr. Hill mentions, the Surveyor was, of course, acting under instructions from the board—general, if not specific—first, in refusing to allow the salary of A. R., and secondly, on the point being pressed, in withdrawing his objection. I have had many cases before my notice of this policy of "get it if you can."

Yours, &c.,

#### LAW v. PRACTICE.

March 6th 1906.

(Chartered Accountant)

[The whole question is a simple one of fact. There were two sources of income—the profits of the owner and the profits of the manager—both of which were taxed. If the manager buys out the owner, *primâ facie* he must pay both taxes.—ED. ACCT.]

#### Income Tax, Schedule A.

(To the Editor of The Accountant.)

SIR,—I should be much indebted to you or any of your readers for an opinion upon the following point in income-tax practice.

"A." is the owner of certain licensed property which he has leased to "B." for ten years at a rental of £520 per annum, "B." paying all rates and taxes and maintaining the inside of the premises only. The property, if let independently of a trade tie, is probably worth £550 per annum.

What is the correct amount for assessment under Schedule A?

I enclose my card and remain,

Yours faithfully,

28th February 1906.

KINGSTON.

#### Company Practice.

(To the Editor of The Accountant.)

SIR,—I should be much obliged if you or any of the readers of *The Accountant* would answer the following question:—

Can executors (who are also sole beneficiaries) make a demand (in writing) of a company in which testator held shares to have new share certificates issued to themselves jointly, but not as executors, without executing a transfer, probate having been produced and the executors being sons of the testator?

Thanking you in anticipation,

I am, yours faithfully,

March 3rd 1906.

T. E. A.

[They can "demand" it, but they are not entitled to have it.—ED. ACCT.]

#### After-acquired Property of a Bankrupt.

(To the Editor of The Accountant.)

SIR,—A peculiar case respecting the powers of a bankrupt has recently come before my notice, and in order to solve the problem may I ask for the assistance of some of your many readers? To state the case as clearly as possible, I am assuming that I am a creditor of the estate of an undischarged bankrupt. The bankrupt has recently recovered damages in an action brought by him for a personal tort. Now, I am aware that (1) such damages cannot pass to the trustee in bankruptcy; (2) the amount of the damages may be applied by him in the maintenance of his wife and children (? or those dependent upon him). He has, however, assigned the whole amount to his solicitor in the action referred to; my point, therefore, is: Is the assignment good, or may it be revoked by the creditors? From the above fact he is apparently dealing with the damages in any way he wishes, and has chosen to assign the amount to his solicitor. Having a free hand, therefore, cannot I garnishee the amount of my claim? If he has powers of assignment, I think it would only be just if the first to benefit should be the trustee of his estate and, indirectly, his creditors.

Yours truly,

L. H. L. S.

#### Registration for the Profession.

(To the Editor of The Accountant.)

SIR,—I have read with considerable interest the leader on "Associations of Accountants," in your issue of the 24th ult., and am sorry to learn that yet another

"diploma conferring body" has been formed. Surely it is high time something was done with regard to registration for the profession, and I am sure all Chartered and Incorporated Accountants will agree with me when I say it is most unfair to be brought into competition with unqualified men.

As a country practitioner I meet with cases constantly where rent and debt collectors, insurance agents, teachers of bookkeeping (many of whom have no practical knowledge of accountancy), and persons following various trades, are styling themselves accountants, and, in my opinion, all this is being done with a view to being registered at some future date. I am confident the longer the question of registration is postponed, the more unqualified competition we shall have to face in the future, and if the Institute and the Society cannot agree upon amalgamation, then surely we are not going to stand by like two fighting dogs and see a third run away with the bone. I am sure all qualified professional accountants will have no objection to established persons practising the profession, who have been in practice, say, for the past five years, being admitted to registration, and other cases could be taken on their merits. In my opinion, there is danger in delay, and I think a general canvass of the qualified men will be overwhelmingly in favour of registration in some form or other. Chartered Accountants and Incorporated Accountants could still practise under the same style, whilst unqualified practitioners could be known as accountants. I am sure we have nothing to lose by registration, but something to gain.

Yours truly,

R. SLATER WINDLE.

*Barnoldswick, March 6th 1906.*

## The Institute of Chartered Accountants in England and Wales.

At a meeting of the Council, held on Wednesday, the 7th March 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—

Mr. John Gane, President, in the chair; Mr. W. B. Peat, Vice-President; and Messrs. W. Ashworth, J. B. Ball, J. W. Barber, J. H. Blackburn, W. Blease, E. M. Carter,

Ernest Cooper, Sir John Craggs, Mr. E. Edmonds, Sir Walter Fisher, Messrs. W. H. Fox, A. H. Gibson, J. Gordon, T. Gregory, J. E. Halliday, J. S. Harwood-Banner, M.P., A. C. Harper, D. Hill, F. A. Jenkins, H. Woodburn Kirby, G. Walter Knox, A. O. Miles, F. W. Pixley, W. Plender, F. J. Saffery, T. G. Shuttleworth, G. Sneath, J. M. Wade, W. Waterhouse, F. Whinney, and J. W. Woodthorpe.

In presenting to Mr. W. D. Webster the Certificate of Merit (Sixth), obtained by him at the recent Final Examination, the President referred to the privilege which he considered fell to the occupant of the chair for the time being to offer on behalf of the Council and himself a few words of congratulation and encouragement to candidates who successfully passed the examinations of the Institute. He expressed regret that the prize-winners, of whom there were four, were not able to be present, but, speaking to Mr. Webster as their representative, he exhorted them to endeavour to prove to the public and to all those with whom they come in contact, that the title Chartered Accountant implies the possession, not only of technical ability, but of all those qualities of rectitude, high mindedness, and honourable conduct, which go to make a real man.

Mr. Frederick Whinney made a report as to what took place at a conference of Chambers of Commerce, Industrial Associations, Municipal Corporations, and Local Authorities with regard to Municipal Accounts, which he and the Vice-President had attended on behalf of the Institute.

It was decided to submit to the Local Government Board the names of Mr. T. A. Welton, Mr. J. S. Harwood-Banner, M.P., and Mr. T. Bowden as representatives of the Institute for the purpose of giving evidence before the Departmental Committee on Municipal Accounts.

The Examination Committee reported that they had considered whether the results of the examinations should be published at an earlier date than at present, but they were of opinion that no alteration should be made. The Committee also reported that they had appointed the following gentlemen to be examiners:—

### *Preliminary Examination, June and December, 1906.*

Professor Henry E. Armstrong.

### *Intermediate Examination, May 1906.*

Bookkeeping (Partnership), Mr. A. H. Gibson.

Do. (Executorship), Mr. T. G. Shuttleworth.

Auditing, Mr. F. W. Pixley.

Rights and Duties of Liquidators, &c., Mr. J. B. Ball.

### *Final Examination, May 1906.*

Bookkeeping (Partnership), Mr. D. Hill.

Do. (Executorship), Mr. T. G. Shuttleworth.

Auditing, Mr. H. Woodburn Kirby.

Rights and Duties of Liquidators, &c., Mr. J. B. Ball.



*Final Examinations, May and November 1906.*

Bankruptcy and Company Law, Mr. E. F. Turner.

Mercantile Law and the Law of Arbitrations and Awards, Mr. Leslie Hunter.

The Parliamentary and Law Committee reported that the application of the Institute of Accountants in Victoria for a Royal Charter of Incorporation had been refused.

The Secretary reported the death of Mr. J. H. Hackett, A.C.A., Birmingham.

## The Newcastle Chartered Accountants Students' Society.

### Bookkeeping on the Slip and Card Systems.

By E. E. PRICE, F.C.A.

A Lecture read at a meeting of the above Society.

In these days of keen competition anything that will promote speed, facility of reference, and economy of labour is welcomed by the up-to-date business man, and it is because the Slip and Card Systems of bookkeeping claim to answer these requirements that I venture to bring them before you to-night, feeling that Chartered Accountants ought always to be ready to advise their clients upon the system of bookkeeping most suitable for their particular business, and to deal with any new invention that promises to give increased facilities, and when any novelty is introduced they should be willing to study it, and be prepared to state what are the advantages or disadvantages of using it.

I propose to divide my remarks into two divisions, viz. :

The *Slip* System as applied to books of first entry (Day Books, Invoice Books, Cash Books, &c.).

The *Card* System as applied to Ledgers, Indices, &c. Dealing first with the *Slip* System.

The posting and balancing of a Ledger is very mechanical and commonplace work. I daresay many of those before me are very familiar with all kinds of Ledger posting, and regard it as very simple and uninteresting work. So it is, but you will readily admit that it is very important that it should be properly done, for upon it depends the accuracy and completeness of the Balance Sheet and Accounts to be afterwards compiled. It is also important that it should be done regularly and promptly, and that any required account should be quickly and easily found, and that all details relating thereto can be obtainable without difficulty or delay.

The present system, which we will call the "Book

System," consists generally of a Cash Book, one or more Day Books, a Journal, and one or more Ledgers; and in the case of businesses of moderate size it answers very well, but in the case of very large businesses, with Ledger Accounts running into thousands, there are certain difficulties connected with the *Book* System which, it is alleged, are overcome by the *Slip* System.

Let me give a few particulars, which will illustrate the volume of business dealt with by some of our London warehouses:—

Number of letters (morning post), over 1,000

Number of entries Sold Day Book per day, 1,000.

Number of Day Books in use, 100.

Sold Ledgers in use, 15 to 20.

Folios in each Ledger, 14,000.

Ledger Accounts open, 7,000.

Not only are the daily entries in the Day Books and Ledgers very voluminous, but these entries have to be dissected or analysed into a large number of departments, often more than twenty in number, which, of course, adds very heavily to the bookkeeping.

In such an establishment the Book System is found in practice to be cumbrous and laborious to work, as I think you will see, if you follow out the details with me.

Assume that twenty clerks are employed in the Entering Room, ten of whom are entering up the Day Books and the other ten making out invoices. Ten Day Books will be in use. These ten books cannot be retained in the Entering Room for more than one day, after which they must be passed into the Dissecting Room, and the entries analysed under departments. Here, too, the Day Books are added up and balanced against the dissections.

Assuming that the work is done with promptitude and regularity, the ten Day Books used on Monday would spend Tuesday in the Dissecting Room, and on Wednesday would be in the Ledger Room, and might find their way back to the Entering Room by Thursday.

On this assumption thirty Day Books would be in constant use, but in practice a much larger number are required. The Dissecting Room is sometimes delayed with the monthly balance and gets behind. The Ledger keepers are also hindered at times by the work of making out Monthly Statements and the Half-yearly Balance, and thus a much larger number of Day Books are required. In one London establishment the number of Day Books in use reached nearly 200.

These Day Books contain a full copy of every invoice issued. An invoice will sometimes cover more than a page, and the work involved in writing them up, dissecting, and posting is greatly increased by the length of the entries therein.

Now, consider what it means to have 200 of these books in use at the same time. Each of the fifteen or twenty

Ledger keepers has to post from each of the 200 Day Books, and he must endeavour to post in regular order of date. His Ledger only contains one-fifteenth of the firm's customers, and his time is largely taken up hunting through the 100 or more Day Books for entries relating to the particular accounts which are in his Ledger.

In cases such as described the Book System has the following disadvantages:—

- (1) Unnecessary labour.
- (2) Delay in posting.
- (3) Difficulty of reference to details.

The following slides were shown to indicate the faults of the old system:—

No. 1. Facsimile of Day Book.

No. 2. Facsimile of Ledger Account.

Now let us consider a similar business where slips are used in lieu of Day Books, and we will take the case of a large wholesale warehouseman, in what is called the "soft goods" line. We will suppose that we have to deal with a very large number of sales, varying from a few shillings to £1,000, and that we require a satisfactory and simple system for posting these sales with as little labour as possible.

Illustrations were here given of the following forms used in the Slip System of bookkeeping:—

No. 3, *Sale Card*, containing a record of the various departments from which purchases have been made, with the view of enabling the Packing Room to include all in one parcel, and to enable the Entering Room to make a complete invoice.

No. 4, *Sale Note*.—Details of goods made out in each department of the Warehouse and attached to the parcel of goods. After despatch the Sale Notes are handed to the Entering Room for preparation of the invoice.

No. 5, *Docket or Invoice Summary*.—This is made up in the Entering Room, and is a summary of all sales for a given customer in the day. The relative Sale Notes are attached, and it thus becomes a complete record of sale.

No. 6, *Day Book and Dissection Book Combined*.—For summarising totals of departments, and at same time posting to customers' debit in Sales Ledger.

No copying of the invoice is required, the only details entered in this Day Book being "Customer's Name," "Total of Invoice," and "Amount allocated to each department."

These books can be arranged in sections corresponding with each group of Ledgers, such as:—

Town.	A—F,
"	M—R,
"	S—Z,
Country,	do. do.

and the dockets are sorted out so that they can be readily entered in the Day Book in any system of division that is found convenient.

After entering dockets in Dissection Book they are filed away under date alphabetically, and can, if desired, be called back against the carbon copies in the departments. The chance of any going wrong may thus be guarded against.

It will be found in practice that this system has the following advantages:—

*Economy of Time and Labour*.—The copying of the detailed invoices is saved.

*Promptitude of Posting*.—By sorting the slips into divisions corresponding with the Ledgers the work of posting is greatly facilitated.

*Facility of Balancing*.—The Day Book and dissections being in one, all differences between dissections and Day Books are avoided.

*Ready Reference to Details*.—The slips being put away under an alphabetical arrangement, and in order of date, any details can be ascertained without reference to subsidiary books.

The following slides containing other applications of the Slip System were also shown and explained:—

No. 7, Bankers' Ledger Account, as posted from cheques and debit slips.

Nos. 8 and 9, Burroughes Adding Machine, and sample of work done by machine.

Used by bankers and others for automatic summarising of slips, bills, and cheques, &c.

Adaptation of Slip System to general bookkeeping (American).

No. 10, Day Book Slips and Duplicate.

No. 11, Cash Book Slips, Duplicate, and Receipt.

No. 12, Aggregate of Slips forming Ledger.

*Time Ledger Accounts for Use in Accountants' Offices.*

No. 13, Time Slip. Principal Assistant.

No. 14, Time Slip. Other Assistants.

No. 15, Set of Time Slips for matter for one day.

No. 16, Form of Ledger for summarising time.

No. 17, Drawer for keeping Slips for each matter.

No. 18, Cabinet to hold 12,000 Slips.

Some of the advantages of the use of the Slip System for Time Ledgers were explained, viz.:—

(1) *Saving of Time and Labour*.—The work on the Time Ledgers is reduced by one-half, as there is no copying of the narrative of work done, either into Day Book or Ledger. Time can be written up at any moment, without waiting for your Diary or wasting time in fetching it.

Before posting up the Summary of Time in the Ledger the Slips are sorted and all posted together.

(2) *Accuracy*.—No errors can occur in copying from badly written Diaries. The slips are easily called back to Ledger, as they are already sorted under each matter. The different grades have different colours, and consequently there is little risk of posting in the wrong column.

(3) *Promptitude and Regularity*.—There is no difficulty or delay in collecting all Time Slips for the day's work such as occurs with Diaries. All Time Slips, including those of clerks working away from home, are collected and sorted daily, and all time can be posted up promptly.

(4) *Facility of Reference*.—A bundle of slips for any particular matter can be taken out and used for drafting an Account of Charges without stopping the work of posting the Time Ledger. The slips can be produced in Court, if required, and are good evidence, as each entry is made at the time, and initialled by worker.

In Diaries it is impossible to produce entries without laying bare the titles and particulars of other entries which may refer to confidential work.

#### *Loose Leaf and Card Ledgers.*

We now leave that part of the subject which refers to slips used in place of Day Book entries, which may be called "Posting Slips," and refer to systems of Card and Loose Ledgers.

The following slides were shown, and the advantages and disadvantages of the Loose Leaf System were discussed.

No. 19, "Dade" Loose-leaf Ledger.

No. 20, "Dade" Loose-leaf Ledger, mode of inserting a new leaf.

Illustrations of Card Ledgers were also shown upon the screen, including the following:—

No. 21, Sales Ledger (Form No. 1).

No. 22, Sales Ledger (Form No. 2).

The principal advantages claimed for the Card Ledger System were considered, viz.:—

- (1) Only current accounts are kept in the Ledger case or drawer, all closed or dormant accounts being removed to a special place.
- (2) Cards are arranged either alphabetically or by number, and no index is required.
- (3) Any number of cards can be used for the same account. There is therefore no transferring from one account to another, and no opening of new Ledgers. Cards are also much handier to use than Ledgers.
- (4) The taking out of Trial Balances is facilitated, as the cards can be distributed among several clerks, and the balances listed in a few hours. Similarly

Monthly Statements or Circulars can be readily made out and despatched, as any number of hands can be put upon the work at the same time.

- (5) Overdue accounts can be selected and placed before the principal for his consideration without interfering with the routine of daily posting of other accounts.

The arrangement of Card Ledgers was next discussed, and illustrated by the following slides:—

No. 25, Alphabetical arrangement.

No. 26, Numerical arrangement.

No. 27, Geographical arrangement.

The advantages to be derived from the use of the Card Index were discussed in connection with the following slides:—

No. 28, Address Index for Circulars.

No. 29, Actuary's Valuation Card.

The application of the system to Stock and Share Books was considered, and the following slides were shown:—

No. 23, Debenture Stock Account.

No. 24, Preference Shares Account.

In these two instances we have a class of Ledger Account for which the Card System is specially adapted, as it so greatly facilitates the issue of Dividend Warrants, and addressing of Circulars, Annual Reports, &c.

It is sometimes stated as an objection to the Card System that cards may be lost, or fraudulently changed, and with the view of meeting this objection the following suggestions were offered:—

(1) *Aggregate Balancing*.—The Card Ledgers should be used only for a set of Ledgers, such as Sold Ledgers, and be checked by an Aggregate Account in the Private Ledger. This account may be so arranged that not only the balances on the cards at end of financial year are checked, but also the totals posted on each side, total debits and total credits being separately agreed.

The abstraction of a card or the omission of a posting would thus be liable to be detected. It would, however, be possible to abstract a card and make up the deficiency by fraudulent entries on another card. It will therefore be necessary to prevent if possible the use of a card for an improper purpose, and the question arises whether the auditor can exercise an efficient check to prevent this being done. With this in view the following forms were shown:—

No. 30, *Special Ledger Card*.—This form bears the firm's stamp, attached independently of the printer's, the die being kept under personal control of principal. It also bears the Ledger-keeper's initials, and date when card taken into use, and the auditor's stamp at each audit. Together with this form is used:—

SERIAL NO. 3.

No. 1754.

Name WM. DAVIDSON &amp; Co.,

Address 173 Wood Street,  
London.6/2/04  
E.W.F.Firm's  
Stamp.

1904		£	s	d	1904		£	s	d	
Jan. 1	To Balance..	10	14	5	July 11	By Cash ..	130	0	2	
Feb. 5	" Goods ..	15	13	4	"	" Discount .	3	6	8	
7	Do. ..	2	3	3	"	" Allowance	4	19	10	
Mar. 30	Do. ..	109	15	8	Dec. 31	" Balance..	17	10	0	
Sept. 3	Do. ..	17	10	0						
		£	155	16	8		£	155	16	8
1905										
Jan. 1	To Balance..	17	10	0						

AUDIT

1904

AUDIT  
1904

No. 31, Auditor's List.—All the cards concerned in the original issue are listed, and are counted at each audit. Ultimately cards fully exhausted would be returned to custody of principal. Cards unused would be retained by him until required.

UNUSED  
IN USE  
CLOSED

	1903	1904	1905		1903	1904	1905		1903	1904	1905
1	✓	✓	✓	25	✓	✓	✓	49	✓	✓	✓
2	✓	✓	✓	26	✓	✓	✓	50	✓	✓	✓
3	✓	✓	✓	27	✓	✓	✓	51	✓	✓	✓
4	✓	✓	✓	28	✓	✓	✓	52	✓	✓	✓
5	✓	✓	✓	29	✓	✓	✓	53	✓	✓	✓
6	✓	✓	✓	30	✓	✓	✓	54	✓	✓	✓
7	✓	✓	✓	31	✓	✓	✓	55	✓	✓	✓
8	✓	✓	✓	32	✓	✓	✓	56	✓	✓	✓
9	✓	✓	✓	33	✓	✓	✓	57	✓	✓	✓
10	✓	✓	✓	34	✓	✓	✓	58	✓	✓	✓
11	✓	✓	✓	35	✓	✓	✓	59	✓	✓	✓
12	✓	✓	✓	36	✓	✓	✓	60	✓	✓	✓
13	✓	✓	✓	37	✓	✓	✓	61	✓	✓	✓
14	✓	✓	✓	38	✓	✓	✓	62	✓	✓	✓
15	✓	✓	✓	39	✓	✓	✓	63	✓	✓	✓
16	✓	✓	✓	40	✓	✓	✓	64	✓	✓	✓
17	✓	✓	✓	41	✓	✓	✓	65	✓	✓	✓
18	✓	✓	✓	42	✓	✓	✓	66	✓	✓	✓
19	✓	✓	✓	43	✓	✓	✓	67	✓	✓	✓
20	✓	✓	✓	44	✓	✓	✓	68	✓	✓	✓
21	✓	✓	✓	45	✓	✓	✓	69	✓	✓	✓
22	✓	✓	✓	46	✓	✓	✓	70	✓	✓	✓
23	✓	✓	✓	47	✓	✓	✓	71	✓	✓	✓
24	✓	✓	✓	48	✓	✓	✓	72	✓	✓	✓

When the balances are checked against Trial Balance, the card numbers in use would be checked and could be easily called over against the list. Any unused cards in bookkeeper's hands would be produced and examined. Cards filled up would be also produced, unless previously checked and returned to principal. Cards not used and unissued by principal would also be counted.

To obtain extra cards would be made very difficult, as it would be necessary to counterfeit not only the cards and its printed form, but also the firm's die.

To prevent erasures, the cards would have a tinted surface, and any erasure would reveal the white card underneath.

The Lantern illustrations Nos. 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, referred to above, are reproduced in the lecturer's paper on this subject read before the London Society on 11th December 1901, and printed in the "Transactions" of the London Society for the year 1901.

## Liverpool Society of Chartered Accountants.

THE annual meeting was held at the Library of the above Society on 23rd February, at 4 p.m., Mr. G. Bowler, F.C.A. (President) in the chair. The following members were present:—Messrs. J. S. Harmood-Banner, M.P., Blease, H. Bowler, W. Blease, A. H. Chalmers, Glass, Finney, Hodgson, Jackson, Wade, White, and W. E. Mounsey (Hon. Secretary).

The Annual Report and Accounts were considered and passed.

The following is the Report:—

The Committee have pleasure in presenting their annual Report.

The number of members on the roll at the end of the year was 95, an increase of two.

Your Committee have had under consideration the acquisition of more suitable rooms for the headquarters of the profession in Liverpool. They have, however, been seriously handicapped by the limited membership of the Society. They desire therefore to appeal to the members for their co-operation in order to obtain an increased membership of the Society. They feel strongly that it would be an advantage to the profession to have a larger and more accessible suite of rooms.

The educational classes mentioned in the last Report have been continued, and a revised syllabus of three courses has been issued in order to try and meet the needs of the students. The Committee regret that the support accorded to these classes has been disappointing. They recently sent a letter to the members of the profession in Liverpool and district, asking them to bring these classes

before their articulated clerks, but up to the present the response has not been encouraging.

During the year your Committee have been in correspondence with the Liverpool Chamber of Commerce regarding the Report of the Select Committee on Municipal Trading. They are glad to see that a Departmental Committee has been appointed to consider certain matters relating to Municipal Accounts, but they join with the Associated Chambers of Commerce in their expression of regret that the constitution of the Committee is not on the lines of the recommendations made by the Select Committee of the Joint Houses of Parliament (see *The Accountant*, year 1903, p. 1034). They are pleased, however, to see that Mr. Gane, F.C.A., President of the Institute, has been placed on the Committee.

The annual dinner of the Society was held at Exchange Station Hotel, on 16th November 1905. The President of the Institute was unable to be present owing to indisposition, but the Committee welcomed the attendance of Mr. W. B. Peat, the Vice-President. The Presidents of most of the leading commercial associations in the city also attended.

The Committee have received a communication from the Institute regarding the practice of a number of firms of inserting their names in directories in leaded type. The Council consider it is a form of advertising, and wish it discontinued. The Committee respectfully recommend that the members comply with the wishes of the Council. The list of members of the Society in the Liverpool Directory will be continued, but in ordinary type.

The Committee regret to record the death of Mr. H. D. Eshelby, a well-known and highly respected member of the Society.

The retiring members of the Committee are Messrs. Bowler, Finney, and Jackson. Under Article 33 Messrs. Bowler and Finney are eligible for re-election. It will also be necessary to elect another member in place of Mr. Jackson.

Nominations must be sent to the Hon. Secretary of the Society at least four days before the date of the meeting.

The Hon. Treasurer's Statement and Accounts will be submitted, duly audited, at the annual meeting.

GEORGE BOWLER, *President*.

W. E. MOUNSEY, *Secretary*.

The President, in moving the adoption of the Report, reviewed the work done by the Society during the past year.

The following members were elected to fill the vacancies on the Committee:—Messrs. Bowler, Finney, and Denton. Messrs. Howarth and Dawson were re-elected Auditors.

A vote of thanks to the President terminated the proceedings.

## Bristol Society of Chartered Accountants.

THE third annual meeting of this Society was held on Monday, the 5th March, at the Library, Albion Chambers. The chair was taken by Mr. F. A. Jenkins, the President, and after the notice convening the meeting had been read, the Report and Accounts, as set out below, were adopted.

### Report and Accounts.

The Council forward herewith Income and Expenditure Account for the year ended 31st December 1905, and Balance Sheet made up on that date, which have been audited by Mr. Henry Anstey.

The Council hope that those local members of the Institute of Chartered Accountants who have not yet joined the Society will apply for membership. The pecuniary aid which the Society receives from London depends largely upon the support which is accorded locally.

The continuation of the special classes for articulated clerks, which have been carried on with considerable success, is dependent upon the grant which this Society is able to obtain from the Institute for that purpose. The reports of Mr. G. H. Boucher and Mr. A. E. Ashmead upon the examinations held by them at the close of the session are of an encouraging nature, and the Council are assured that a systematic course of special teaching during the whole period of articles must prove of great benefit. The Council are pleased to note that Mr. R. C. Haddon, one of the Bristol students, took a distinguished place at the last Institute Final Examination.

Every effort is made to keep the library up to date, and the Hon. Librarian will be pleased at any time to receive suggestions from members as to any books which they desire purchased.

A successful meeting was held on December 1st 1905, when short papers were read, by the President on "The Auditor's Certificate and Report," by Mr. Clare Smith on "The Rights of Partners *inter se*," and by Mr. Stephen Tryon on "Secret Reserves." The chair on this occasion was taken by Mr. W. B. Peat, Vice-President of the Institute, who was accompanied by Mr. Daniel Hill, one of the members of the Council of the Institute.

In accordance with the rules the officers and auditor retire, and the retiring members of the Council are Mr. F. W. Baber and Mr. A. L. Hellyer. These are all eligible for re-election.

By order of the Council,

CLARE SMITH, *Chairman*.

W. VAUGHAN JENKINS, *Hon. Secretary*.

Dr.		INCOME AND EXPENDITURE ACCOUNT for the Year ended 31st December 1905.								Cr.			
1905		£		s		d		£		s		d	
Dec. 31.	To Expenses of Library, viz. :—												
	Rent .. .. .	30	0	0									
	Stationery, Printing, and Sundries .. .. .	6	5	8									
					36	5	8						
	General Expenses .. .. .				0	5	9						
	Depreciation :—												
	Books, 15 % on £221 19s. 6d. ..	33	5	10									
	Furniture and Fittings, 5 % on £32 17s. 3d. .. .. .	1	12	10									
					34	18	8						
	Capital Account :—												
	Balance Transferred .. .. .				8	1	8						
					£79	11	9						

Dr.		BALANCE SHEET, 31st December 1905.						Cr.					
		£		s		d		£		s		d	
To Sundry Creditors .. .. .				25	7	10							
" Capital Account :—													
Per last Statement .. .. .		195	1	11					155	6	3		
Income and Expenditure Account—Balance													
this year.. .. .		8	1	8					27	16	9		
					203	3	7						

Bristol, 20th February 1906.

The officials were re-elected as follows.—President, Mr. Frederick A. Jenkins, F.C.A.; Hon. Librarian, Mr. Stephen Tryon, F.C.A.; Hon. Secretary, Mr. W. Vaughan Jenkins, F.C.A. Messrs. F. W. Baber and A. L. Hellyer, the retiring members of the Council, were re-elected, as was also the Auditor, Mr. Henry Anstey.

A vote of thanks to the Chairman concluded the meeting.

Audited and found correct,  
(Signed) HENRY ANSTEY, Chartered Accountant.

During the year 46 applications for admission were received from various parts of the Commonwealth, and dealt with.

Fifty-seven candidates—three for the Preliminary, seven for the Intermediate, and 47 for the Final—attended the examinations of the Institute, including the joint examination mentioned hereunder, held during the period in Melbourne, Bendigo, Geelong, Adelaide, Broken Hill, Cairns, and Brisbane. The Board of Examiners recommended 23 of these for admission—three Preliminary, two Intermediate, and 18 Final—they having fulfilled the required tests.

As members are aware, on the 28th March last a meeting of Institutes domiciled in Victoria was, at the request of the State Ministry, in response to certain queries from the Home Government, held at the office of the Hon. Messrs. Swinburne and Mackey, to formulate the grounds of an agreement for a petition to His Majesty the King for a Royal Charter. A preliminary agreement satisfactory to all parties was arrived at, and after a considerable number of sittings of a subsequently appointed conference, comprising representatives of the several Institutes, a petition for the Charter was, through the State Governor, sent to London in September last. This matter is now under consideration at the Colonial Office; as also is that of the opposition to the granting of the same from other

## The Federal Institute of Accountants (Incorporated).

### Annual Report, 1905.

THE Council submits Report and Balance Sheet for the year ended 31st December 1905. The accounts have been duly audited to that date, and the financial position disclosed is satisfactory. The attention of members is called to a considerable sum retained as an asset for "Charter expenses." This represents expenditure incurred *directly* by your Institute, and will be treated as preliminary expenses should the Charter be granted. There will be a considerable sum to be brought into account, and similarly treated, for *indirect* expenditure also incurred and still to be incurred.

States of Australia. The Conference is, however, hopeful in the matter, as the petition is made by Victoria as a Sovereign State, and consequently in no way antagonistic to the profession in any other State. The details of the petition are in the knowledge of members.

At the first meeting with Ministers, Messrs. Godden and E. L. Wilson represented your Institute, and Messrs. Runting and E. L. Wilson represented you on the Conference. The thanks of the Institute are due to these gentlemen for their exertions on your behalf, and the result was approved by general meetings held at Adelaide, Brisbane, and Melbourne.

It was arranged by the Conference that a joint examination of those eligible for the Final Examination of the Incorporated Institute of Accountants, Victoria, and of your Institute, under the (draft) Charter conditions, should be held in November, under a board of three members from each. Messrs. Godden, Runting, and E. L. Wilson were appointed by your Council to act on behalf of this Institute. This examination was duly held, and the results published. Sittings were held at Adelaide, Bendigo, Brisbane, Broken Hill, Perth, and Melbourne, and Mr. H. G. Turner (Hon. Secretary to the Conference) acted as Hon. Secretary to the Board.

Through your President your Institute had much pleasure in again assisting the West Australian Institute of Accountants by acceding to its request to set and adjudge the examination papers in bookkeeping and auditing.

Considerable additions have been made to the several libraries, more are contemplated, and the state of efficient equipment will be continued.

Social reunions of the members have been held in Melbourne and elsewhere with the greatest success, and it is felt that such gatherings conduce to the continuance of that

good feeling which should animate the profession, and periodical repetitions will be carried out.

The Institute now numbers 205 members, viz.: One honorary member, 89 Fellows, and 115 Associates. During the year six members forfeited their membership.

While the accession in numbers is satisfactory, the Council reports that the alteration of the rules, by raising the age at which an Associate could be admitted for examination from 21 to 23 years, and requiring satisfactory experience of at least three years on books of accounts, has been beneficial.

During the year the Council has been approached for the opening up of other divisions or branches in different towns in the Commonwealth. Though provisionally agreeing to these requests, in accordance with the "Federal" standing of the Institute, the perfecting of the same must necessarily remain in abeyance pending the granting or otherwise of the Charter.

The Council desires to recognise the hearty and valuable co-operation of the Divisional Boards of Advice in the other States, and specially to refer in connection therewith to Messrs. W. H. Beattie and F. A. Muller (Brisbane), H. P. Wilson (Adelaide), and O. I. Haines (Perth).

It will be necessary to elect members of the Council and an Auditor for the ensuing twelve months. Nominations must be made as provided by the rules.

The retiring Councillors are:—Messrs. W. H. Beattie, Haines, Langford, Runting, Shackell, Wallace, and E. L. Wilson.

The retiring Auditor is Mr. W. F. Remington, who is eligible for reappointment.

W. J. RUNTING,  
*President.*

Melbourne,  
16th January 1906.

# BALANCE SHEET at 31st December 1905.

Liabilities.				Assets.			
	£	s	d		£	s	d
Applicants' Deposits .. .. .	79	16	0	Library at Cost—			
Sundry Creditors .. .. .	6	2	2	Victoria (Melbourne and Bendigo) .. ..	95	15	9
Subscriptions Paid in Advance .. .. .	1	1	0	Queensland .. .. .	45	16	10
Accumulation Account—				South Australia .. .. .	23	9	3
At 31st December 1904 .. .. .	499	10	9				165 1 10
Transferred from Revenue Account .. ..	49	2	11	Furniture .. .. .	35	2	6
	548	13	8	Depreciation on same .. .. .	5	2	6
							30 0 0
				Charter Expenses (partial) .. .. .			51 1 8
				Fixed Deposit (Royal Bank, Melbourne) .. ..	300	0	0
				Royal Bank, Melbourne, Current Account .. ..	17	11	3
				Cash at Queensland .. .. .	28	4	2
				South Australia .. .. .	43	13	11
					389	9	4
					£635	12	10
	£635	12	10				

## AGGREGATE REVENUE ACCOUNT of Head Office and Divisions for 12 months ending 31st Dec. 1905.

	£	s	d	£	s	d		£	s	d
To Advertising .. .. .	20	17	6				By Subscriptions .. .. .	294	10	6
General Charges .. .. .	34	7	5				Entrance Fees .. .. .	44	2	0
Audit Fees (Head Office and Divisions) ..	3	3	0				Diploma Fees .. .. .	12	15	6
Printing and Stationery .. .. .	23	10	2				Library Fees .. .. .	1	1	0
Management and Rent at Head Office and Divisions .. .. .	153	0	0				Interest on Deposits .. .. .	13	19	4
Examinations .. .. .	46	18	5							
Depreciation on Furniture .. .. .	5	2	6							
Annual Meetings .. .. .	30	6	5							
Accumulation .. .. .				317	5	5				
				49	2	11				
				<u>£366</u>	<u>8</u>	<u>4</u>				
								<u>£366</u>	<u>8</u>	<u>4</u>

DANVERS GODDEN,

Secretary.

16th January 1906.

Audited and found correct,

W. F. REMINGTON, F.F.I.A., Aust.

Auditor.

**Incorporated Accountants.**

THE annual dinner of the Manchester and District Society of Incorporated Accountants was held on the 2nd inst. at the Midland Hotel. Mr. Henry Steele, the President, occupied the chair.

Mr. Arthur A. Haworth, M.P., responded to the toast of "The Houses of Parliament," proposed by Mr. Harry Lloyd Price, candidate and a new member. Among questions put to him as a candidate was, "Are you in favour of beer being made the same price as coke?" As, remarked Mr. Haworth, I had not your Society at hand to calculate the matter out, I did not answer the question. Another elector, who was evidently something of an agriculturist as well as a democratic, asked, "Are you in favour of the naturalisation of the land?" (Laughter.) Alluding to his entrance into Parliament, Mr. Haworth said that, like many other new members, he went trying to look as if he had been there before, but his pride did not last long, for a somewhat dignified policeman asked him if he wanted the members' entrance. He answered that he did, and then was forced to say, "What do I do next?" By that time, observed Mr. Haworth, the policeman's dignity relaxed, and I thought it best to show that I had none, and in reply to the policeman's "New member, sir?" I said, "That's me." (Laughter.) Referring to the debate on the Address, the member for South Manchester remarked that it was calculated to give a new member as bad an impression as he was likely to get of the House of Commons, so far as its business capabilities were concerned. In concluding his remarks, Mr. Haworth commended the objects of the Society in protecting the public against unqualified accountants.

Mr. James Martin, Secretary of the parent Society, sub-

mitted "The Civic Authorities of Manchester and Salford." He made reference to the appointment by the Local Government Board of a Departmental Committee to consider whether a standard form of accounts was practicable. Although that Committee had not been authorised to deal with the important question of the auditing of local authorities' accounts, he was glad to think that the Manchester and Salford Corporations had been pioneers in having their accounts audited by qualified professional accountants.

The Lord Mayor (Councillor Thewlis), replying to the toast, said: As to accountants he had great belief in their wisdom, but they ought to be compelled to present their accounts in an intelligible fashion—(laughter)—so that the wayfaring man, though a fool, might fairly understand them. He thought a Balance Sheet ought simply to be a sheet of figures, which on the one side showed your obligations or liabilities, and on the other what you had got against them, and the difference between one and the other should be either what you have or what you haven't. (Laughter.)

The other toasts were:—"Our Courts of Justice," proposed by Mr. Jacob Earnshaw, and responded to by Vice-Chancellor Leigh Clare; "Trade and Commerce of the City and Port of Manchester," submitted by Mr. Frederick Brocklehurst, and replied to by Mr. E. H. Langdon; "The Society of Accountants and Auditors," given by Mr. Drummond Fraser, and acknowledged by Mr. William George Raynor, the President; "Our Guests," called for by Mr. Francis G. Burton, and answered by Mr. J. Grant Gibson and the Town Clerk of Salford (Mr. L. C. Evans); "The District and Branch Societies," proposed by Mr. Walter J. Smith, and responded to by Mr. Edwin Richmond and Mr. C. Hewetson Nelson.



## Municipal Accounts.

### The Question of an Independent Professional Audit. The Need of Standardisation.

At the invitation of the Municipal Trading Committee of the London Chamber of Commerce a Conference of Chambers of Commerce, Industrial Associations, Municipal Corporations, and Local Authorities, was held on Monday, March 5th, at the Whitehall Rooms, Hotel Métropole, London, "with the object of discussing the recommendations of the Joint Parliamentary Committee on Municipal Trading, 1903, and the best means of securing their adoption as regards the independent professional audit of "Municipal Accounts and the standardisation of such "accounts."

The chair was taken by Mr. Felix Schuster (Chairman of the Council of the London Chamber of Commerce), and there was a large attendance, including the following gentlemen representing the London Chamber of Commerce:—Right Hon. Lord Avebury, Right Hon. Lord Brassey, K.C.B., Right Hon. Lord Rothschild, Mr. Thomas F. Blackwell (President of the London Chamber), Mr. Charles Charleton (Deputy-Chairman of the Council of the London Chamber), Mr. Sydney Morse (Chairman of the Municipal Trading Committee of the London Chamber), Mr. F. Whinney and Mr. W. B. Peat (Institute of Chartered Accountants), Mr. G. Bartholomew, Mr. James Rigg, Mr. N. L. Cohen, Mr. E. Waterhouse, Mr. James Laughland, Sir Thomas Brooke-Hitching, Mr. G. N. Hooper, Mr. W. J. Thompson, Mr. Edgar Harrison, and Mr. J. M. Fells. Also Mr. B. I. Greenwood (Institute of Builders and the National Federation of Building Trade Employers of Great Britain and Ireland), Mr. George Nichols (Association of Master Plasterers), Mr. A. J. Giles (Grocers' Association), Major Vane Stow (Master Printers' Association), Mr. E. Alexander Duff (Institute of Bankers), Mr. J. W. Lorden (London Master Builders' Association), Mr. J. C. Pillman (London Flour Trade Association), Mr. J. McLaren and Mr. Andrew Williamson (Institute of Accountants and Actuaries in Glasgow), Mr. Thomas Wrightson (Association of Master Lightermen), Mr. G. A. Touch and Mr. Richard Brown (Society of Accountants in Edinburgh), Mr. A. J. Rhodes, Mr. Dixon H. Davies, Mr. Arthur Taylor and Mr. W. L. Madgen, M.I.E.E. (Industrial Freedom League), Mr. Walter Boutall (Electrotypers, Stereotypers, Process, and General Engravers' Association, Lim.), Mr. F. Coysh (United Kingdom Commercial Travellers' Association), Mr. Harold E. Perrin (Secretary, Institute of British Carriage Manufacturers), Mr. William Shepherd (National Federation of Building Trade Employers of Great Britain and Ireland), and Mr. W. G. Raynor (Society of Accountants and

Auditors). As also representatives of most of the various Chambers of Commerce throughout the country.

The Chairman: My Lords and gentlemen, on behalf of the Council of the London Chamber of Commerce I am very pleased to be able to welcome you here, and I am very proud to be privileged to take the chair at so important and so representative a gathering, to discuss a most important subject. This meeting, as you are aware, has been called by the Municipal Trading Committee of the London Chamber of Commerce, who are acting with the concurrence and full sanction and approval of the Chamber. As far as we have been advised, we have here, besides several distinguished authorities on the subject we are going to discuss, the representatives of 48 Chambers of Commerce, 18 Industrial and other Associations, and 20 Municipal Corporations and Local Authorities. Prior to the conference, the Municipal Trading Committee of the London Chamber issued to the Chambers of Commerce, Industrial Associations, and Municipal Corporations and Local Authorities, the following questions:—"Do you, or do you not, agree "with the recommendations of the Joint Select Committee "on Municipal Trading of 1903?" I need hardly remind you that, in referring to the Joint Select Committee, we mean the Joint Committee of both Houses of Parliament, which sat on this subject and reported in 1903—a most important report, to discuss which we are gathered here to-day, and the report and recommendations of which we hope to have carried out before very long. The other question was, "Do you, or do you not, agree that it is "desirable that a standard form of accounts should be "prescribed for all municipal bodies?" The following replies were received:—In favour of the recommendation of the Joint Committee 32 Chambers of Commerce, 44 Local Authorities, 15 Industrial and other Associations—a total of 91; and I may say that some of these Chambers of Commerce have not sent any representatives here to-day because they were so thoroughly in accord with the resolutions which were going to be proposed. Then, conditionally in favour of the recommendations of the Joint Committee, replies were received from 21 Local Authorities. Against the recommendations of the Joint Committee three Chambers of Commerce, 26 Local Authorities, and none of the Industrial and other Associations—a total of 29. So you have 91 in favour of these resolutions, and 29 against. In favour of standardisation, replies were received from 35 Chambers of Commerce, 57 Local Authorities, and 15 Industrial and other Associations—107 in all. Conditionally in favour of standardisation, 11 Local Authorities; and against standardisation, one Chamber of Commerce and 17 Local Authorities, a total of 18. So you have 107 in favour of standardisation, 18 against, and 11 expressing a conditional approval. Before beginning the proceedings to-day, I should only like to be allowed to say this: We are not here to discuss the question

of municipal trading. (Hear, hear.) That is outside the scope of this conference altogether. But whatever our notions may be on this important question, surely the most earnest advocate of municipal trading cannot possibly object to the accounts of municipal bodies being properly kept. In fact, it is just the advocates of municipal trading who ought to be most desirous of seeing the results of such trading clearly brought out to the public, and to the ratepayers whom they represent. But none of those who are at all acquainted with the subject can deny that the question of audits of municipal bodies is one which is, to say the least of it, capable of a great deal of improvement. The question of borrowing, which has occupied the public mind for a long time, and I do not hesitate to say has affected the money market considerably, has also had this effect—that good enterprises and thoroughly well-organised and audited corporations have had to suffer along with those not so well organised, and whose borrowing has been excessive; that is a point we should all bear in mind. The public have become generally somewhat alarmed at the extent of municipal borrowing during the last ten years, and the good have suffered along with the bad. The difficulty of finding a guiding rule and principle as to sinking funds and depreciation is one to which this report gives considerable attention, and it is to this end, of getting rid of that difficulty, that attention is directed, and that standardisation is recommended in one of the resolutions before you. I will not detain the meeting any longer. There are several gentlemen whom we should like to hear, and several resolutions are going to be proposed to us. All I wish to say is that this conference is not convened in any spirit of adverse criticism either of municipalities or, least of all, of the representatives of the great Government Department which controls these matters. (Hear, hear.) But, having had a report of a representative Committee, an able report of a Committee which has spared no pains in taking evidence, I think, as commercial men, it should be our aim and object to see that these recommendations are thoroughly carried out. I now call on Mr. Blackwell, President of the London Chamber, to move a resolution. (Applause.)

Mr. Blackwell: Mr. Chairman and gentleman, I am asked, as President of the London Chamber, to move the first resolution:—"That this conference, representing Chambers of Commerce, Industrial Associations, Municipal Corporations, and Local Authorities, expresses its regret that effect has not been given to the recommendations of the Joint Select Committee on Municipal Trading as regards appointing independent professional Auditors of Municipal Accounts." In doing so, I am not going to add many words to what Mr. Schuster has said, but I should like to assure this meeting that this is not moved in a hostile spirit. I can speak for myself, and I think for the majority here, that we recognise the excellent work which has been done by the

municipalities in all our large towns and cities. We all of us recognise how much the conditions of life have been bettered, and altogether we are enjoying benefits that 40 years ago we could scarcely have hoped for. But, notwithstanding this, I think as business men, and as taxpayers, we must feel that it is right that that expenditure should be accounted for in a proper manner, and the accounts examined by professional auditors who should be able to satisfy those who find the money that it has been well spent in the public interest; and I am quite sure that all well-managed municipalities will recognise the justice of this claim, and that they will be as ready to grant what we ask as we individually would be in our own business to show that the money we raise and expend is well expended—that it is expended in the public interest for the benefit of the people, and I trust and hope you will be unanimous in passing this resolution.

Mr. J. M. Fells: I think you have honoured me by asking me to second this resolution, not only because I am a member of the London Chamber of Commerce of some twenty years' standing, but also because I was one of the witnesses before the Committee to which reference has been made to-day. I join with the previous speakers in pointing out that the recommendations of the Committee were evidently framed in no hostile spirit whatever to our municipalities. On the contrary, the great merit of their report seems to be that it is a report to which members who are in favour of municipal trading and members opposed to it were equally in favour. One has to consider what it is that keeps the Government from acting upon the report of the Committee for so long a time. I think it must be because sufficient pressure has not been applied to the Government to induce them to carry it into effect. After all, the English people are, presumably, a practical people. This question was referred to a Committee of seven Lords and seven members of the House of Commons. The members of the House of Commons were representative of all shades and sections of the House. During the inquiry the Committee held some 11 sittings, some 4,000 questions were asked, and some 29 witnesses were examined. Those witnesses were, to a very large extent, witnesses of a representative character, and were not merely representative of any particular school of thought. It might be well, perhaps, to place on record who those witnesses were. They were the Permanent Secretary of the Local Government Board, the Lord Advocate, and the Counsel to the Lord Chairman of the House of Lords on Bills. The local authorities were represented by the Town Clerks of Birmingham, Leeds, Stockport, Blackpool, Southampton, and Warrington, and the Chairman of the Finance Committee of the city of Glasgow; also by the Mayor of Battersea. The Comptrollers and Treasurers of the large towns of Liverpool, Blackpool, and Glasgow were also witnesses. The District Auditor of the London County Council was also a witness. The Elective Auditors

from Birmingham and Manchester gave their testimony; whilst the science of accountancy was represented by one of the Past-Presidents of the Institute of Chartered Accountants, by the then President of the Incorporated Society of Accountants and Auditors, and by the President of the Municipal Treasurers' and Accountants' Society. Evidence was also given by the President of the Institute of Bankers, and by the President of the Federation of Engineering Employers, whilst ratepayers' associations from Glasgow, Battersea, and other places were represented, and, in addition, there were other witnesses from special associations on special subjects. When one considers that these 14 gentlemen, occupying, at any rate, a representative capacity, sat on that Committee and heard that evidence, one cannot but think that their report and their recommendations are entitled to rather more consideration than has been given by—I am almost afraid to say whom, but I think it must be by the permanent officials of the Government departments. At any rate, whatever the difficulty may be, I take it that this conference can do a great deal to remove all such difficulty, and that the resolutions carried by so influential a meeting as this will do very much towards bringing to fruition the work of those members of the two Houses who gave so much attention to the subject three years ago, and one of whom is to-day an important member of the present Government. I have much pleasure in seconding the resolution.

The Chairman: I will ask those gentlemen who desire to take part in the discussion to send up their names along with the names of the associations which they represent.

The Town Clerk of Fulham (Mr. Prescott): Mr. Chairman, I have given the Secretary notice of an amendment in order that the question may be discussed, and, with your permission, I will read it. It is "to delete the words after 'the word 'regret' to the end of the paragraph, and substitute for them the following words, 'strong opinion that 'steps should be taken to apply an independent and 'efficient audit of municipal accounts.' " The object of the amendment, Sir, is that the conference may not be bound to an expression of opinion that the proposed independent audit should be on the lines laid down by the Joint Select Committee. My reasons for this are, briefly, three, and I hope they will commend themselves to the meeting in so far that I shall get a seconder, so that the matter may be discussed. We contend that the chief essentials of an official audit are wanting in the system recommended by the Joint Select Committee. First of all, the auditor has to be appointed by the Council for a term not exceeding five years. He is to be eligible for reappointment, and the fact that he has to seek re-election destroys the independence which should be an attribute of this particular office. That is the first reason. The second reason is that his remuneration and emoluments are to be voted by the authority whose

accounts he is called upon to audit and report upon. In my opinion, Sir, and in the opinion of the authority I represent, this fact must tend to reduce the value of his report in the minds of the ratepayers, for it appears to leave the auditor open to influences adverse to a fearless discharge of his duties. The third reason is that the only power given to the auditor is that of Report. We contend that an efficient audit—that an audit to be thorough and satisfactory, should go further. The auditor should be able to take effective action against any irregularity or abuse, against any wrong entry in the accounts, to deal with ratepayers' objections, and give decisions, subject to appeal, in all these cases with a free hand, and have the capacity to deal with these matters from an effectual and business point of view. That is to say, he should not be subordinated to any mere finance committee. I venture to think, with great respect, that it is rather by the adoption of the system applied to the metropolitan boroughs—namely, the Local Government Board audit—it may be strengthened; I do not say it is perfect by any means, but I think it is on the right lines, and that it is in that direction that an independent, strong, and efficient audit can be hoped for. I have worked in the provinces under the system of the professional auditor appointed by the Corporation, and I am not going to say a word of disparagement against that gentleman. I have also worked in London under the auditor of the Local Government Board, and I have no hesitation whatever in pronouncing in favour of the Local Government Board audit, although I think it may be improved and strengthened. To my knowledge, and I have great pleasure in saying it, the system of the Local Government Board audit in London has practically achieved the standardisation of municipal accounts. It has given to us a set of Profit and Loss Accounts, of municipal Trading Accounts, for the metropolis which are as sound, as complete, and as uniform as any to be found elsewhere; and when I say that I mean it in its broadest sense—the best either in commercial or municipal circles. I have pleasure in moving the amendment to the resolution, the object of it being that we shall not bind ourselves at this moment as to the precise form in which this audit shall be effected. (Hear, hear.)

Councillor A. E. Cook (Islington): I have much pleasure in seconding the amendment of my friend, the Town Clerk of Fulham, because when I got the circular I read it through very carefully and I thought after reading it, and also reading the recommendation of the Committee, that the resolution did not mean quite what it said. It appeared to me that the Committee had an object in view which was not being expressed by the resolution. The proposition of the Town Clerk of Fulham is the one which, I think, we want to carry this afternoon, because it asks that the audit shall be an independent audit, and, at the same time, an efficient audit. Now, I suggest that if we follow the lines of the

recommendation of the Joint Select Committee we are not going to get that independent audit which we wish for. I look to see who it is that the Joint Select Committee recommend shall have the appointment of the auditor, and I find he is to be appointed by the authority itself whose accounts he is to audit. That certainly seems to me to be a weakness rather than a strength in any audit. It seems to me to be a contravention of terms to say "independent" when the authority itself appoints its own auditor, and for that reason, I have much pleasure in more or less formally seconding the amendment.

Mr. Ross (Exeter): I beg to support the resolution, Mr. Chairman, because I think no time should be lost in giving effect to the report of the Joint Committee. Perhaps under the old *régimé* it might not have mattered very much; but, without saying a word about the *pros* and *cons* of municipal trading, I contend that now we have municipal trading it is most important that we should have an entirely new audit. And I might be inclined to think something more of the amendment than I do if there were not a line to the effect—and I think this particularly interests provincial towns and cities—that the Scotch system of appointing an auditor from a distance should be recommended. I think this entirely removes the objection which has just been made by the Town Clerk of Fulham, because under the present system a strong Committee who have got some municipal trading in their hands, and are anxious, as all Committees are, that it should show to the very best advantage, are quite easily able to arrange matters that it comes out in such a way that it benefits, not only the public, but themselves. I cannot find the same fault with the recommendations which have been proposed by the Joint Committee as the Town Clerk of Fulham, because it seems to me that in the second paragraph it is definitely set out exactly what this audit should do, and it is particularised in a very remarkable way. And there is another paragraph which follows after that which states that the auditor shall be required to give a report; and to the minds of many in the provinces I am sure that, in addition to the details which have been set forth here, the giving of a report the same as would be given by any independent auditor of a commercial undertaking is of the most vital importance to us who are interested in ordinary municipal work. I have great pleasure in supporting the resolution.

Mr. William Shepherd (National Federation of Building Trade Employers): As this report of the Joint Committee has been discussed by the members of our Federation throughout the country, I should deprecate very much weakening our position in going to the Government and substituting something else for what the Select Committee has put forward as their recommendation, after giving the fullest consideration to the subject in question. I say that the present system of local audit does not satisfy the ratepayers throughout the country. It may satisfy the officials,

but it by no means satisfies the ratepayers, and the one thing that recommends itself to the ratepayers throughout the country is the substitution for the present system of an efficient audit. They do not want any longer to be subject to a red-tape audit. If a member of the Chartered Accountants is appointed to audit, then you may say that he will take the responsibility of his own work, and you will have no cut-and-dried system of audit, anyway. If you appoint an auditor to audit the accounts of a public company, if you appoint a man of position, you know the responsibility which he feels, and you know what weight in all proceedings the report of a properly qualified auditor, a member of the Society of Chartered Accountants, has. For instance, in all limited companies the certificate of the auditor, if a properly qualified man, is conclusive against the Crown in regard to income-tax; and that is the position we are in throughout the country. I do not know that I need take up more of the time of the meeting, but it seems to me that any departure from the recommendations of this Joint Committee will give any Government department who has a wish to shelve this question a good reason for doing it, and we do not wish it shelved. I ask you to reject the amendment, and pass the resolution.

Mr. R. B. Millar (Edinburgh): Mr. Chairman and gentlemen, I desire to move a rider or addition to the resolution, and it contains two points that, I think, the meeting will agree with. One of these is self-evident. (Cries of "Chair.")

The Chairman: I think we had better deal with the amendment first, before we have an additional rider to the resolution. The amendment is before the meeting.

Councillor D. Williams (Bermondsey): I support the amendment, Mr. Chairman. I think it is a right thing to have an independent auditor appointed officially by the Government, or whoever it may be. I do not think it is desirable for the Council whose accounts are audited to have the right of appointing its own auditor. One would pull one way and one another if that were done. We want an outsider to do it independently of all parties concerned on the Council. That is the only way, in my opinion, to make the audit an efficient one. (Hear, hear.) On my Council, where this matter was brought up and discussed the other night, it was unanimously considered that that was the right thing. We agreed with that entirely. We support the amendment in preference to the resolution.

Mr. Sydney Morse (Chairman of the Municipal Trading Committee of the London Chamber): One word in reply to the amendment which has been proposed. The Town Clerk of Fulham suggests that the election of the auditor destroys his independence. I would point out that all company auditors are re-elected, or subject to re-election annually, and I have never heard it yet suggested that that destroyed the independence of the auditor. Secondly, he suggested that the fact that the authority fixed the remuneration was also

ad principle in the report of the Joint Committee, but the report of the Committee on this point is "in the event of any disagreement between the local authority and the auditor as to his remuneration, the Local Government Board should have power to determine the matter," which I gather to mean that the remuneration is in effect left in the hands of the Local Government Board. That was the second point Mr. Prescott made, and the third was that the Select Committee's report did not go far enough. He suggested that power should be given to the auditor to see that his recommendations were carried out. Well, gentlemen, I am afraid that is absolutely impracticable. I do not think you will get a professional accountant to undertake an audit and make recommendations if he is the person to set in motion and carry out those recommendations. It might involve him in litigation, and it certainly would involve him in costs. I do not think, if I may respectfully say so to the Town Clerk, and those who have supported him, that on consideration they will feel it is right to put on the auditor the responsibility of having to carry right to the bitter end any recommendations he thinks it well to make. I think it will act as a deterrent. I hope we may ask the meeting to look at it in this way—all matters at the present day are, to a large extent, matters of compromise. There are always two parties. Each has strong views, and it is desirable, if we can, to get a fair compromise on most matters. We have the great advantage here of having had the matter inquired into by a Joint Select Committee, and they have made certain recommendations. No doubt some of us would have liked them to have gone further, and possibly others think that in certain matters they have gone too far, but I venture to think that the businesslike way is to take their report as the one before the Government, and as being considered by them, by the appointment by Mr. Burns of a Committee on the matter, and ask them to carry it out. If it is found when they have done so that it is desirable that the matter should be carried still further, I have no doubt the Government will carefully consider anything in addition, but I hope in the present position, when we have a definite report with distinct recommendations, we shall be able to send that forward, and not something else which, however important, and as we may think in some cases desirable, is, after all, a mere resolution which is on the same lines as the report, but is not so definite and cannot be so easily dealt with. I hope, therefore, that the meeting will accept the resolution and not the amendment, although not showing any hostile spirit towards the mover and seconder of the amendment in any way.

Mr. Millar: What I was going to propose was objection to two specific recommendations, so that if the resolution was passed in its entirety I felt I would be precluded from moving it.

The Chairman, intervening: We will put the amendment first, and afterwards deal with your rider.

Alderman Bennett (Warrington): I think in one respect there is no difference of opinion among us, and that is that the existing system of municipal audit is extremely anomalous, illogical, and absurd. (Hear, hear.) I can speak with considerable knowledge, because I had the honour of acting in my own town as mayor's auditor, and generally my connection with the Council has given me an insight into the work. The real solution is to apply the principles which apply to ordinary limited companies and municipalities. The main objection which seems to be urged against the proposal of the Select Committee is that the auditor is appointed by the Council, and they are interested parties. If the auditor is appointed by the general body of the ratepayers, and the same limitation imposed as to qualifications—namely, that it be stipulated that the auditor must be a Chartered Accountant—it seems to me that we should get the maximum of efficiency with the maximum of control. We want a qualified man appointed free from inside influence which might prevent him from exercising his functions properly, and that result would be secured by the suggestion I have made. Of course, the elected auditors appointed at the present time are often quite incapable of performing their duties properly, and in my own town we had a curious illustration of the absurdity of the present system only the other day. I do not know whether it is the same all over the country; but in my town, although there are two elective auditors, the ratepayer can only vote for one. But there were three candidates, one of whom was a Chartered Accountant. That led to the splitting of votes, and the only man supposed to be competent for the post was not elected. I think that cannot be defended on any ground whatever. I do not want to take up the time of the meeting, but I am bound to say that while, theoretically, I feel inclined to favour the Local Government Board audit, I do not think that in practice it is as satisfactory as an audit conducted by a professional accountant. There is at present a great deal of red tape about it. I think we should have greater elasticity and efficiency if the method I have suggested were adopted. I shall support the original proposition.

The Chairman: There is a great deal more business in front of us, and unless any gentleman has a strong wish to speak on the amendment I will take a vote on it.

The amendment was then put to the vote and negatived, only nine hands being held up in favour of it.

Mr. Millar (Edinburgh): I ask you to add to the resolution these words, "But objects (a) to the selection of auditors being limited to members of two corporations specified in the said recommendations," namely, the Institute of Chartered Accountants and the Society of Accountants and Auditors; and it reads on "(b) to the audit of five large Scottish cities being assimilated to that for the major local authorities in England rather than to the system of audit

"already applicable by statute to other Scottish boroughs." The practice in Scotland is that the Secretary for Scotland appoints the auditors of the boroughs, and if the recommendations are supported as they stand it would involve the limitation of the selection of auditors of five Scottish boroughs to members of the Institute of Chartered Accountants in England, and to members of the Society of Accountants and Auditors. It seems to me that in London you welcome men from all parts of the Empire, if duly qualified. The proposition of the Committee is that the municipalities should select duly qualified professional men as auditors, and that there shall be an *imprimatur* given to their appointment by the Local Government Board. Now it seems to me that it would be better to allow the selection to be free. If an Irishman comes here duly qualified and sets up business in London, or in Liverpool, or Swansea, or any of those places adjacent to Ireland, why should not any one of the towns be entitled to select him as their auditor? I will not ask why, if a Scotchman comes to London and sets up business here, should you not select him? (Laughter.)

Mr. James Martin: May I rise to a point of order? I have in front of me the recommendations of the Select Committee, and they apply to England and Wales as regards the members of those two Societies. The Committee recommend that "The existing system of audit applicable to Corporations, County Councils, and Urban District Councils in England and Wales be abolished," and certain recommendations are substituted.

Mr. Millar: The gentleman who has just spoken has omitted to read to the end of the paper, because at the foot he will find these words, "The Committee recommend that if in the case of Scotland it is thought desirable that the existing statutory audit of accounts of County and Borough Councils should be maintained, at any rate the system of audit for the five large cities, which is at present regulated by private Acts, should be assimilated to that which is recommended for the major local authorities in England." I think the meeting will be unanimous in thinking that the five large Scottish towns should, at any rate, be entitled to select their auditors among their own people, and I think you will agree it is desirable, in the appointment of independent auditors, there should be no limit to any particular body if other men have equal qualifications.

Mr. Morse: As we read the words that the gentleman has just quoted, "assimilated" does not mean that the Scottish accounts are to be audited by English accountants, but that if a change is made the system suggested should be treated on a similar basis for the five larger towns. The Scotch Accountants' Society is mentioned in the earlier portion of the report as a Society which should be represented upon the Departmental Committee. It does say, as regards England

and Wales, auditors being members of the two Institutes—the Chartered Accountants and the Incorporated Society—should be appointed for the English boroughs, and it then says "assimilated" in Scotland. And I think if anything is wanted we should say that it means—and I think the gentlemen from Scotland will feel that it means—that in Scotland the Scotch Society is the Society from which the auditors should be appointed.

Mr. Millar: That does not meet the main point—that is a subsidiary matter, and it shows that it is necessary to call attention to the fact that if we approve of this recommendation as it exists, we approve of something which, in our hearts, we do not agree with. I feel certain that if we consider the position fully, we shall come to the conclusion that it is advantageous to communities in England and Wales that they should have the free right of selection of their auditors, and that the selection should not be confined to the members of any two Corporations, and that it would be undesirable to introduce words of this kind into an Act of Parliament. It is nearly two hundred years ago now since Scotland joined England, and it is rather late in the day to begin to give preference to England over Scotland. (Laughter.)

The Chairman: Have you your amendment written, and is there a seconder? (Loud cries of "No.") There appears to be no seconder, and so it falls to the ground, and I will put the original resolution.

The resolution was then carried by an overwhelming majority, only three votes being recorded against it.

Mr. C. Charleton (Deputy-Chairman of the Council of the London Chamber of Commerce): Mr. Chairman and gentlemen, I have been asked, as Deputy-Chairman of the Council of the London Chamber, to move the next resolution, and I have much pleasure in doing so. It is short and to the point, and I rather imagine you will vote for it. It is to this effect: "That this conference is convinced of the desirability of securing as far as possible the standardisation of municipal accounts on business lines." I think you will agree with me that the sting of that is in the tail. (Laughter.) A hint has been given to me that one of our friends in the provinces proposes to move an amendment to this resolution, which I believe to be a very excellent amendment, covering an immense amount of ground; but I think that this resolution of ours covers more ground—indeed, it is intended to do so. I think we are all agreed that there should be a standardisation of accounts, and I think we are all still more agreed that this should be upon business lines. The principal points I would bring before you in a very few words indeed are, in the first place, the question of a Sinking Fund; in the second place, and perhaps even more important, the question of depreciation—(hear, hear)—which, I venture to think, has not been adequately dealt with in all municipal accounts: in the

third place, that there should be an actual distinction between all departments dealt with, as there is in all well-conducted businesses. A man likes to know whether he is losing money on one particular article and making it upon another. These accounts ought not to be jumbled together. Further, in arriving at the Profit and Loss Account, all these accounts should be based upon income and expenditure, and not merely upon receipts and payments. (Hear, hear.) With these few words I have pleasure in moving this resolution.

Mr. Dixon H. Davies: Sir, as a member of the Industrial Freedom League, which has given some attention to this matter, I have great pleasure in seconding this resolution. A point which has appealed very strongly to us, and which I ventured to bring before the Joint Committee, is that the municipal bodies suffer a disadvantage in carrying on concerns as compared with commercial bodies, for the reason that the financial pressure which is always present in commercial concerns gives an automatic governor to the administration, and prevents it from either over-trading or becoming restricted into a superseded enterprise. That pressure is not present, of course, to the same extent in municipal concerns. One knows that the result of that pressure is to introduce into the managers of commercial concerns a kind of intuitive business sense. They are not so dependent on a well-trained business manager, who has grown up in the atmosphere of financial necessity. He is not so dependent upon statistics as will be the administration of a municipal body; but it seems to me it is a vital necessity to a municipal body that their accounts should be kept in such a form that they will be readily compared one with another—(hear, hear)—so that the statistics shall enable any officer of a municipality to measure his efficiency, to measure the cost, and to measure the profit against the administration of any other borough, or, indeed, any other commercial concern, as far as possible. But even if there were exact standardisation in municipal accounts, there would always be a sort of artificial competition present among officers of municipalities, which would replace to some extent that commercial sense which must be present in commercial concerns, and the standardisation of forms of accounts should be such as would render a similar system of appropriation imperative. One knows perfectly well that different towns adopt different methods of charging to one account or the other capital outlay which they made. For instance, street widenings are in one town placed down to General Improvement Account, and in another they are placed to Tramway Account; and other circumstances of vital difference occur in the methods of keeping these accounts which render the accounts at present kept, to the investigation of the ordinary economist, really valueless from the point of view of comparing the efficiency, the cost, or the profit. I have much pleasure in seconding the resolution.

The Chairman: I will be glad if the gentleman who is here to move the amendment will do so.

Mr. H. D. Leather (Cleckheaton): Mr. Chairman and gentlemen, may I say at the outset that this amendment is not moved in any antagonistic spirit to those who convened this meeting; but the object of the amendment is, if I may venture to say so, to somewhat amplify, and place on somewhat more definite lines, the resolution brought forward by the Committee, and if the Committee will accept this amendment it may save the time of the gentlemen who are present to-day. A second circular has been sent out that contains this amendment. It is as follows:—  
“That this conference is convinced of the desirability of securing the standardisation of the accounts of the municipalities and local authorities, and recommends that so far as practicable such accounts be kept on the basis of income and expenditure and not on the basis of receipts and payments, as is at present often the case, and also that Trading and Profit and Loss Accounts be prepared yearly of the various commercial undertakings of such authorities.”

The Chairman: The mover of the resolution does not see his way to accept the amendment, on this ground: He informs me that he thoroughly approves of the spirit of the amendment, but he thinks it is unwise to enter into details at all, because, once you begin to go into details, you will have to specify and amplify. The mover and seconder of the resolution are of opinion that the resolution covers the ground which the amendment tries to deal with.

Mr. Leather: Mr. Chairman, our feeling is that the words “on business lines” are so very wide-reaching that it is very difficult to follow the matter. Might I say that this point applies more particularly to the accounts of small local authorities, rather than large municipalities which have already adopted a basis of income and expenditure. It is exceedingly important, so far as local authorities are concerned, that this basis of income and expenditure should be adopted, and we think that is a point that should be brought before the meeting this afternoon. Is it necessary for me to explain to a meeting of business gentlemen here to-day that practically every commercial undertaking has now adopted a system of working on income and expenditure and not on receipts and payments—a system which has been adopted by all the large municipal authorities and also by the County Councils? Well, it is a system that, I think, will commend itself to all present; and with regard to the method of Trading and Profit and Loss Accounts, I think that, as business men, it will commend itself to you all. I do not think it is necessary for me to press the point further. I think it speaks for itself. Alderman Wade, of the Bradford Council, has kindly promised to second this amendment.

Alderman David Wade, J.P. (Bradford Chamber of

Commerce): I have very much pleasure in seconding the amendment, although at the same time I think it is on all-fours with No. 2 resolution. (Laughter.) It may go a little further, and I think that everyone recognises that what we want is a thorough audit of all Municipal Accounts on business lines. I do not know that it is necessary to say more, but simply to second the amendment moved by Mr. Leather. (Cries of "Vote.")

Mr. Charleton: I notice that the words of our resolution are "the standardisation of Municipal Accounts." We intend to include all accounts of local authorities; but if it would meet the wishes of the proposer and seconder of the amendment that we should add the words "municipal and other local" accounts, we shall be very pleased to put those words in. We wish to add all local authorities. (Cries of "All.")

Mr. Millar: Mr. Chairman, I should like to say a word in support of this resolution. (Cries of "Agreed.") I do not think it would be fit that this meeting should adopt this resolution on the footing that the amendment is equivalent to the motion, because in Scotland we have this system of standardised accounts and we have a mixed system. I think it would be interesting in connection with a point of this kind just to say a word upon this subject, because it greatly supports this resolution. It would even support the resolution without the words "on business lines," because I think it may be assumed that in standardising accounts all the officials engaged in such matters would proceed on business lines. Now, the accounts of municipalities and local authorities in Scotland are kept, in so far as they are assessment accounts, on the basis of receipts and payments, and after long experience I have come to the conclusion that that method is the right method applicable to assessment accounts. If you levy a rate for a year the understanding is that the rate is to be applied within the year, and when you come to levy your rate for next year, if you find that you have spent less than the rate, then you have a surplus over which will be to the advantage of the estimate which you prepare for the next year. If you find you have spent more than your rate, you must add to the estimate for next year. (Cries of "Vote.") As to accounts which have been described in the resolution as accounts of commercial undertakings, and as accounts where Trading and Profit and Loss Accounts are applicable, we call these revenue-producing undertakings and Revenue and Expenditure Accounts. We do not say "Profit and Loss Accounts," because, as municipalities, we do not conduct business for profit. We take on the tramways, gas works, electricity works, and works of that kind for other reasons than mere profit. Because they affect the use of our streets, and so on, it is desirable we should take them on. ("Vote.") As regards these revenue-producing undertakings, according to the

Scotch form, those accounts are kept on a revenue and expenditure basis. The best example of it is that in the case of the Gas Works Act of 1871 you find that what has existed ever since then is the standard form for Gas Accounts—the Scotch form of Municipal Accounts.

The Chairman: I really must ask this speaker to speak to the point. You have now occupied six minutes, and are beginning to talk about Scotch accounts. I am afraid it is not quite within the province of the resolution. The question is whether "the standardisation of municipal accounts on business lines" is desirable or not.

Councillor L. S. Abramson (Chairman of the Finance Committee of the Newport Corporation): Mr. Chairman, may I just ask one question? What I want to know is this: will the mover of the resolution, if he cares to do so, tell us what he means by "on business lines"? I think then we can come to a conclusion very quickly—if it is not too big a question to answer in a short time. What one Committee would consider business lines another Committee might have different views upon; but I think that, if he gave us a lead, we might be able to come to some conclusion.

Councillor A. E. Cook (Islington): This is the second time I have spoken, but I am not a Scotchman and I want to confine the resolution to England and Wales, in accordance with the Joint Committee's report. But I think it is very essential that at this conference we should lay down something of the lines we want to go upon in these accounts. When I received this agenda it struck me as being exceedingly vague to suggest that we should ask the Joint Committee to carry out their instructions on business lines. That may be anything or nothing; it may be something absolutely contrary to what the majority of us here think. But may I call the attention of the meeting to what is already in existence at the present time? In January a Departmental Committee was appointed with Mr. Runciman as chairman, and they had a specific reference made to them on the lines that these accounts should be kept; and, in particular, whether such accounts should be prepared on a system requiring the entries of receipts and payments to be confined, as far as possible, to actual receipts and payments of money or not. Now we are all agreed, I think, that those are the lines we want to go on. Then why, this afternoon, should we be afraid to say so? If we support the amendment—if the mover and seconder of the original resolution will not accept it—I believe we shall be saying exactly what we want, and I am most anxious that we should say what we want, because I come from a borough where we have a very large undertaking with a capital of over £400,000, and where until recently we had little or no Depreciation Account. I am extremely anxious that we should lay down the lines to save ourselves in one or two instances. I have heard of an



instance in a London borough—and I suppose it would, be possible in all London boroughs, and perhaps country as well—where they have left out their town hall in connection with their accounts. In other words, their town hall may be pledged and, as regards the audit, no one would be any the wiser for it. Now, I do say we should be wise this afternoon—if we were to agree that the accounts should be kept on the basis of income and expenditure—in saying so, and I would suggest to the mover and seconder of the resolution that they allow this amendment to be put as an addendum rather than reject it as they wish us to do. I support the amendment.

Mr. Fells: I would ask the mover and seconder of the amendment whether they had in their minds recommendation No. 9 of the Joint Committee: "The Committee are doubtful whether it would be possible to prescribe a standard form of keeping accounts for all municipal or other local authorities, having regard to the varying conditions existing in different districts. But they recommend that the Local Government Departments should invite the Institute of Chartered Accountants, the Incorporated Society of Accountants and Auditors, and the Institute of Municipal Treasurers and Accountants of England and Wales, and the Society of Accountants in Edinburgh, and the Scottish Institute of Accountants, Glasgow, to confer and report upon the matter."

The Chairman: May I point out that this is a matter which is going to be dealt with in the next resolution on the agenda—No. 3?

Alderman E. C. Price (Stoke Newington): I hope the mover and seconder of the resolution will adopt some part of the amendment, at any rate. What difficulty is there in adding to the resolution some indication of the lines, as my friend Mr. Councillor Cook has suggested, upon which we should proceed? And we are in this practical difficulty, that if we reject this amendment—if we allow it to be put as an amendment and reject it—it will go out that we do not intend that the accounts of municipalities in future shall be on the lines of income and expenditure. That is exactly what I think no one would wish to do. We do mean that our accounts shall record all the transactions of the period under review, whether they have actually been paid or not; and I see no reason why we should not do it. Why cannot the mover frame his motion something in this form, "on business lines, including all income and expenditure for the period under review and proper provision for sinking fund."

Alderman Brady (Barnsley): While the authorities I represent are practically in agreement with the amendment, I think it is scarcely sufficiently explicit in itself; and it might be very much amended as well, in my opinion, by

adding a word or words, as by a considerable reduction in the verbiage itself. It seems to me that a very strong opinion has been expressed in favour of the amendment, and it occurs to me that if the mover of it will accept wording of this character it might meet the difficulty and we might be able to agree upon it. It is substantially the same resolution, but just a little bit altered: "That this conference is convinced of the desirability of securing as far as possible the standardisation of accounts of municipal and local authorities, and recommends that such accounts be kept on the basis of income and expenditure, and also that Trading and Profit and Loss Accounts of the various commercial undertakings of such authorities be annually prepared."

Mr. N. L. Cohen: I hope, Sir, that the first suggestion that the reading should be "accounts of municipalities and other local authorities," will be adopted, because we certainly do not want to leave out the district councils. I think the last speaker gave an illustration of the inconvenience of such a definition as was contemplated. He said "We all mean that the test should be income and expenditure," at least, so I understood him. But a moment's reflection will satisfy him that that will be altogether illusory. You would leave out all your liabilities. (Cries of "No.") "Income and expenditure" expresses business lines, which I take to be lines which would show in a correct and practical way what was the outcome—the upshot—of the transactions of the year and the accounts throughout the year. It seems to me that the expression "business lines" is well understood, and it is the most definite instruction we can give.

Mr. Millar: I should say, Mr. Chairman, that the Scotch standard—(laughter)—does contain a statement of assets and liabilities, so that it is just as complete, with the receipts and payments and a statement of what is owing to you, as if you had it in the form of a Revenue Account. We have a Revenue and Expenditure Account for those undertakings where it is necessary. We have Receipts and Payments Accounts for the Assessment Accounts, and I hold, with the trouble that there is in keeping these accounts, that that is the simplest and best way to do it; and therefore I ask you to take the resolution as it stands. If you leave out "on business lines" so much the better. ("Vote.")

Mr. Leather: May I trespass upon you for one moment? as the great object of this resolution is only to emphasise and give an answer to a question of the Departmental Committee, and that is to define the difference between income and expenditure and receipts and payments. It is possible for the Local Government Board officials to argue that the accounts are kept on business lines. We shall not agree with that, but they might argue it. I do not want to take

up time, but if we can meet the views of the mover of the resolution we shall be glad to do so.

Mr. C. L. Duke (Plymouth): I suggest that we should alter both the resolution and the amendment.

The Chairman: On behalf of the mover of the resolution I have the following suggestion to make—that adopting part of the amendment the resolution shall read as follows: "That this conference is convinced of the desirability of securing, "as far as possible, the standardisation of municipal and "local accounts on business lines, and recommends that so "far as practicable such accounts be kept on the basis of "income and expenditure, and also that Trading and Profit "and Loss Accounts be prepared yearly of the various com- "mercial undertakings of such authorities." (Cries of "Agreed.")

Mr. Leather: I will be pleased to fall in with that suggestion.

Mr. Duke: I was going to suggest that it would be quite correct to say "standardisation of accounts of local authorities." That would include all municipal and district councils; and "business lines" should be left out. Some of us who are municipal workers claim that our accounts are at present kept on business lines, and that it is a reflection on municipal business men.

The Chairman: Do you move that those words be omitted—"on business lines"? Then I will now take the vote of the meeting on the question.

Mr. Duke: I will move that the words "on business lines" be omitted.

Mr. F. Coysh (United Kingdom Commercial Travellers' Association): I have much pleasure in seconding that.

The proposition to omit the words "on business lines" from the resolution, upon being put, was negatived by 40 votes to 17, and the resolution as altered was declared carried unanimously.

The Chairman: We now come to Resolution No. 3.

Mr. Fisher: As a member of the Council of the London Chamber I have the pleasure to move this resolution:—"That this conference, while welcoming the Departmental "Committee recently appointed to inquire and report with "regard to 'the systems on which the accounts of local "authorities in England and Wales, &c.,' should be kept, is "of opinion that it should be strengthened by the addition "of independent members connected with practising "accountancy, having regard to the recommendations of "the Joint Select Committee on Municipal Trading." We have already, in Resolution No. 1, agreed as regards appointing independent professional auditors, and I think that when we come to look at the composition of this Joint Select

Committee that has been appointed, we shall see that we very much require our hands strengthened there. The Committee consists at present of Mr. Walter Runciman, M.P., Parliamentary Secretary to the Local Government Board; Mr. J. Bromley, C.B., Accountant-General to the Board of Education; Mr. T. Pitts, C.B., Assistant-Secretary of the Local Government Board, who was in charge of the department in which matters of account were dealt with; Mr. E. P. Burd, Inspector of Audit to the Local Government Board, who was also associated with the department whose action has been called in question; Mr. J. Gane, President of the Institute of Chartered Accountants; Mr. F. Merrifield, Clerk of the County Councils of East and West Sussex; Mr. R. Barrow, City Comptroller of Liverpool; and Mr. J. J. Burnley, Accountant of the Walmsley District Council. There, gentlemen, we have eight names, and seven out of those eight are absolutely connected with our Government officials; and you have only one gentleman there—certainly he is a gentleman who carries great weight, and that is Mr. Gane, who is President of the Institute of Chartered Accountants, and, therefore, comes under the head of an independent accountant. I do not think that any words are required for me to show you that this Committee ought to be materially strengthened in the matter of a professional audit. I leave the resolution in your hands.

Mr. C. Hewetson Nelson (Liverpool): Mr. Chairman and gentlemen, I have very much pleasure, on behalf of the Liverpool Chamber of Commerce, in seconding this resolution. I should like to have said something on it, but I am sure the meeting is already tired, and I will therefore content myself by seconding the resolution. (Cries of "Agreed.")

Councillor F. E. Eddis (Bermondsey): I will not detain the meeting at all, but I thought we came here to consider these questions. It is rather annoying, we only just have one speaker, and then we have several gentlemen saying it is agreed. There are a great many points we want to discuss; but I do not want to be talked down and howled down in London, and therefore I will not discuss the matter.

The Chairman: I am sure it is quite open to anyone to talk within reasonable limits. I do not agree with the remarks of the previous speaker that we are tired. I do not think the meeting is at all tired. I shall be glad if the discussion is continued within reasonable limits; and I am sure we shall be very glad to hear opinions expressed on this resolution. (Hear, hear.)

Councillor Eddis: Then I should like to say a few words. We are inclined to attach great importance to this resolu-

tion. It seems to me that we are dealing very much this evening with the auditor *qua* auditor, and not with the audit *qua* audit, and what I do feel is, that if you have practical men who are not bound down by the Departmental rules, we can then get the whole question looked upon from a much broader view. I think myself that what we have to think of is not only that an auditor is wanted of a certain kind, but that the whole system of audit should be changed; which will require legislation, and I have found, as a matter of fact, that Departmental Committees are not the best of committees for deciding on any change of legislation, because they want practical men who are brought in connection with the whole question, and can see where the errors lie. Now, Sir, the great point—and we find this very much in Bermondsey—the great difficulty we have in really knowing in the least whether any undertaking is paying or approaching paying is this everlasting putting accounts in from one department to another, and transferring accounts for the purpose of making it look well on paper. Therefore, I do feel that what we require is some change in the system of auditing; and it seems to me that if we only trust ourselves to a Departmental Committee we shall not get that change; but if we have practical business men, and not merely professional accountants co-operating with this Committee, and showing them how the accounts may be kept in a fair way, the ratepayers will get the benefit.

Mr. Ross (Exeter): I rise entirely without prejudice, but I would ask the meeting to consider the advisability of not increasing this Committee and making it too cumbersome, because besides the Departmental gentlemen upon it I notice the name of the President of the Institute of Chartered Accountants, and also the name of Mr. Merrifield, the Clerk to the East and West Sussex County Councils, who, I believe, is one of the oldest and most experienced clerks we have in the Kingdom. It seems to me that with such ability it is hardly necessary to increase a Committee of this character. I should think the fewer the better. I simply put that before the meeting as to whether it is really advisable to make any change at all.

Mr. Morse: Sir, on the remark of the last speaker, the real point is that eight out of nine are local government officials or municipal officials. I do not say anything whatever against them personally, except that they are not the independent persons recommended by the Joint Select Committee; and the object of the resolution is to say that a report of a committee of officials is not the report that the Joint Committee recommends.

The Chairman: I do not wish to stifle discussion, but as there appears to be no other speaker ready to take the subject up I will put the resolution to the meeting. I do hope we shall carry it unanimously.

The resolution was carried unanimously.

Mr. Boulton: The resolution I have to put is merely a summary of the opinions we have already arrived at, and does not require a speech. It is merely to give effect to what we have been doing this afternoon. The resolution is "That a deputation from this conference wait upon the President of the Local Government Board to urge upon him the necessity for giving effect to the recommendations of this conference." I have nothing more to say, except to propose this, and I have no doubt you will pass it unanimously.

Mr. Hooper: I have much pleasure in formally seconding the resolution.

Councillor Cook: I wish to move an addendum to this, which will perhaps be accepted. Of course, I quite agree that the object of this conference has been to give guidance to those who are going to represent this conference at the Local Government Board. There is one other point which has not been raised at all at this conference, and which, to my mind, bears very largely on municipal accounts, and which ought, I think, to be considered for a moment. Therefore I wish to add this to your resolution: "and also to urge that auditors shall be appointed in sufficient numbers in order to facilitate the audit." Of course, I am quite aware that by No. 1 resolution we have practically said that every local authority shall have power to appoint its own auditor; but it might so happen that many local authorities might appoint the same auditor, and then perhaps we might be in somewhat the same position that some London boroughs are in at the present time. Now, as a matter of fact, at March 1905 there were no less than two London boroughs that had not had their accounts audited for the year ending March 1904. (Laughter.) That sounds laughable to some of my friends, but it is not so laughable when one has to consider what it means; because if it were the question of a business house it means that it would be stultifying the accounts of the business house until such time as they were efficiently audited. And I am most anxious that there should be some method adopted by which the accounts should be considerably facilitated in their audit; and perhaps when this deputation goes from this conference to the President of the Local Government Board, in addition to urging the resolutions passed at this conference, they might specifically mention what I have said in my addendum. Perhaps if it is accepted I will not occupy the time of the meeting any longer; but, at any rate, I think the audit should not be a year or eighteen months behind.

Mr. Boulton: I have great pleasure in seconding that, or in agreeing to it as the mover of the resolution. It is rather difficult to suggest the exact wording, is it not?

Councillor Cook: Simply to add—"and also to urge that

"auditors shall be appointed in sufficient numbers to facilitate the audit."

Mr. Boulton: You must add the words, "within a reasonable time." (A voice, "Promptly.")

Councillor Cook: Very well. May we add those words, Mr. Chairman?

Mr. Martin: Mr. Chairman, I really think this is a matter we had better leave alone. The observations of our friend from Islington are directed as a criticism against the existing system of Local Government Board audit in London. These accounts, as he points out, for 1903, which have not yet been audited, are accounts which the Local Government Board auditor should have audited. By this resolution which we are passing to-day we propose to get rid of all these existing systems of audit, and what on earth is the good of trying to tinker with them?

The Chairman: If I might venture to make a suggestion I should like to ask the proposer of this to make it an instruction to the deputation to urge its adoption, and not have it as part of the resolution. I think it would rather destroy the weight of the other remarks which we have to make if, in this final resolution especially, weight is attached to this particular point. But I am sure that those who attend the deputation will bear the point in mind, because it is of importance; and I was going to ask gentlemen here present if they will be kind enough—those who are desirous and able to attend the deputation—to give in their names at the end of this meeting, because I am quite sure we all desire it to be as influential and representative as possible; and I am quite sure that such a deputation will be strengthened by including representatives from various parts of the Kingdom. May I take it that you have agreed to withdraw that addendum?

Councillor Cook: On those conditions, yes.

The resolution was then put and carried unanimously.

A delegate: May I ask when the deputation will take place?

The Chairman: I am afraid it is impossible for us to answer that, because we shall have to ask leave from the President of the Local Government Board to give us a day.

Mr. Cohen: May I move a vote of thanks to the Chairman. I am sure we are much indebted to Mr. Schuster, who has many calls upon his time, for coming here and giving us his presence and guidance, and I am sure his influence and authority will be valuable with regard to the most important resolution of all—the determination to press the resolution strenuously on the attention of the authorities. (Hear, hear.)

The vote was carried heartily.

The Chairman: I thank you very much for this vote of thanks, and I thank you very much for your attendance here

in such numbers. I am quite sure that this discussion and these resolutions which we have passed will be of very great service in attaining the object we have in view. (Hear, hear.)

The proceedings then terminated.

## Royal Statistical Society.

A PAPER ON "Wages in the Engineering and Shipbuilding Industries since 1790," by A. L. Bowley and G. H. Wood, was read at the meeting of the Royal Statistical Society on 20th February.

The paper was based on data that have been published in the 1905 volume of the *Journal* of the Royal Statistical Society. The trade union standard rates for many years have been traced for some twenty-six occupations, in about twenty important localities, and the records so obtained have been amplified and verified by personal inquiries, unpublished material, and many printed records. The influences on wages of the varying importance of districts, the transference of labour from one occupation to another, the change from wooden to iron and to steel ships, were discussed and analysed in detail. It was found that, on the whole, there had been no degradation of employment, as is sometimes supposed to have been the result of increasing machinery, but that the various grades of labour have, in spite of the many changes, continued to bear nearly the same proportion to each other; what alteration there is arises from the growth in numbers of machinists, which represents as much a step up for labourers as a step down for artisans.

The main body of statistics relates to the period 1850 to 1905. Wages of shipbuilders have fluctuated more violently, but on the whole risen more, than wages of engineers. The rise of the two combined have been, in 1850-54, 10 per cent.; 1860-66, 9 per cent.; 1869 to 1874, 15 per cent.; 1879 to 1883, 9 per cent.; 1887 to 1890, 12 per cent.; and 1895 to 1898, 10 per cent. The falls have been, 1856-59, 3 per cent.; 1866-68, 3 per cent.; 1877-79, 5 per cent.; 1883-86, 8 per cent.; 1891-94, 4 per cent.; and 2 per cent. since 1901. Each percentage is reckoned on the average at the beginning of the period covered. Average wages in 1905, allowing for all known corrections, were 46 per cent. higher than in 1850, 37 per cent. than in 1860, 27 per cent. than in 1870, 18 per cent. than in 1880, 6 per cent. than in 1890. The changes have varied a good deal from district to district and from occupation to occupation. London, where wages reached a high level at an early date, has made slow progress, while wages at Belfast and the Clyde have increased 50 or 60 per cent. since 1860. Platers, rivetters, and shipwrights have enjoyed a specially

rapid increase. The bulk of the members of the Amalgamated Society of Engineers have made steady but not sensational progress, and labourers have improved their wages at very nearly the same rate as engineers.

The evidence for the period 1790 to 1850 is less certain. A great rise, perhaps 50 per cent., took place soon after 1793. From 1810 to 1850 wages were all but stationary.

Throughout the paper the method of index numbers is used exclusively, and the value and accuracy of the method is discussed incidentally. An attempt was made to affix a measure of precision, a test of the liability to error, of the estimates of the change of average wages.

The paper was prefaced by a short *résumé* of recent work in wage statistics, and a description of the lack of material; and the need for a new wage census, to make comparison with that of 1886 possible, was demonstrated.

## Meetings for the ensuing Week.

**Tuesday**—BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Debate, "That the Acts relating to Income Tax as they are at present administered, and the Methods adopted in Assessing and Collecting the Tax, should be drastically amended." This meeting will be preceded by tea at 6 o'clock, at the Library, 8 Newhall Street.

**Wednesday**—LONDON CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—"Vouching in the conduct of Audits of the Accounts of Joint Stock Companies," by Mr. H. E. Barham, F.C.A., at the Hall of the Institute, Moorgate Place; 6 p.m.

SHEFFIELD CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Mock Arbitration, at the Library, Hoole's Chambers, Bank Street; 6.45 p.m.

**Thursday**—EDINBURGH CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Some Points in Banking," by Mr. Jas. Watt, W.S., F.F.A., at the Hall of the Society, 27 Queen Street; 8 p.m.

**Friday**—LEEDS AND DISTRICT CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.—Lecture, "Rights and Duties of Receivers," by Mr. R. A. Chadwick, M.A., LL.M.

## Personal.

MESSRS. C. F. BURTON & Co., Chartered Accountants, of Norfolk House, 7 Laurence Pountney Hill, E.C., announce that Mr. RICHARD SEWELL, Chartered Accountant and Fellow of the Faculty of Actuaries, has been admitted a partner, and that the business will be conducted under the style of C. F. BURTON, SEWELL & Co., at new offices, 35 Copthall Avenue, London Wall, E.C.

MESSRS. CAMPBELL & CAMPBELL, Chartered Accountants, of 94 Market Street, Manchester, announce that they have entered into partnership with Mr. W. A. SMITH, A.C.A., and Mr. W. SCOTT SMITH, A.C.A., and in future will practise at the above address under the style of CAMPBELL, SMITH & Co.

MESSRS. J. H. CHAMPNESS, CORDEROY & Co., Chartered Accountants, of 103 Cannon Street, London, announce that they have admitted into partnership Mr. CLEMENT MAURICE CHAMPNESS, the son of their Mr. J. H. CHAMPNESS, who duly passed the Final Examination of the Institute of Chartered Accountants in June 1901. The name of the firm will remain unchanged.

MESSRS. DEAKIN & FURNIVAL, Chartered Accountants, announce that they have removed from Foster's Buildings to Orchard Chambers, Church Street, Sheffield.

MR. R. SHEARMAN FARRIES, Chartered Accountant, has removed from 1 Gresham Buildings, to 110 Cannon Street, London, E.C.

MR. J. EDWARD MYERS, F.C.A., of Trafalgar Buildings, Northumberland Avenue, W.C., has been appointed Professional Accountant to the Watford Urban District Council.

MESSRS. W. B. PEAT & Co., of 3 Lothbury, London, E.C., announce that in consequence of the rebuilding of these premises they are moving to temporary offices at No. 11 Ironmonger Lane, London, E.C.

THE CORNHILL MAGAZINE for March contains the customary instalments of "Sir John Constantine," by Mr. A. T. Quiller-Couch, and "Chippinge," by Mr. Stanley J. Weyman. The subject dealt with this month "From a College Window" is the criticism of one's friends. "Mr. Gladstone as I Knew Him," by the Right Hon. Sir Algernon West, G.C.B., gives many personal touches of reminiscence from one who was long in close intimacy with the great statesman. Sir Francis Younghusband, K.C.I.E., writes a concise account of a distinguished soldier in "General Romer Younghusband and Scinde." "Some Natural History: III." is another of Dean Latham's sketches of life in Lambeth while Science is represented by Mr. W. A. Shenstone, F.R.S., who writes "About Solutions."

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Mar. 2nd, was 176, viz. :— New Bankruptcy Proceedings published in the *London Gazette*, 98; Deeds of Arrangement registered, 78. The respective numbers in the corresponding week of last year were : Bankruptcies, 97; Deeds of Arrangement, 92—total, 189 being a decrease of 13. The total number of commercial failures recorded during the 9 weeks of the present year is 1,505; the total number recorded in the corresponding 9 weeks of last year was 1,642, showing a decrease of 137.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Mar. 2nd, was 152. The number in the corresponding week of last year was 195, showing a decrease of 43. The total number filed during the 9 weeks of the present year is 1,386; the total number filed in the corresponding 9 weeks of last year was 1,536, showing a decrease of 150.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Mar. 2nd, amounted to £1,339,951, by way of addition to £3,007,793, previously issued by the same companies. The amount registered in the corresponding week of last year was £507,366, showing an increase of £832,585. The total amount registered during the 9 weeks of the present year was £13,542,286 (in addition to the issues in previous years by the same companies), as compared with £16,321,387 for the corresponding 9 weeks in 1905, showing a decrease of £2,779,101.

## The Profession in Scotland.

### Edinburgh Society of Accountants.

The following are reports of the second and third lectures on "Public Finance," delivered by Professor Shield Nicholson to the Edinburgh Society of Accountants and the Institute of Bankers in Scotland :—

Professor Nicholson, in the course of his second lecture, discussed Adam Smith's first great canon of taxation—that the subjects of every State ought to contribute towards the support of its government, as nearly as possible, in proportion to their respective abilities. The great practical rule of taxation is that the tax must be productive. Adam Smith showed that the necessary revenue of the State could not be obtained without taxing the masses of the people, and an examination of present conditions shows that this is equally true. Taxes on commodities to be productive must be on articles of general consumption, and direct taxes that only fall on the wealthy would be also insufficient. The rich may be expected to contribute, as Adam Smith thought, in a greater proportion (the principle of progressive taxation), but the poor cannot escape altogether. Whatever basis of taxation is adopted, it is implied that the same principle should be applied in similar cases. The unearned increment from land, for example, is only one case, and in nearly all forms of income there are unearned elements that may be set down to the progress of society. But the attempt to appropriate all unearned increments for the State would check all enterprise, and indirectly lower the taxable capacity of the nation. A fundamental principle of taxation is that taxes fall on persons and not on things. This means that every tax in the last resort lessens the spending power of some person, and that all taxes are really disguised income-taxes. This principle properly applied gets rid of a mass of legal and economic fictions, which add vastly to the complexity and cost of the tax system. If it were practicable a universal direct income-tax tempered by progression would be the most equitable and the most economical. At present, even the very poorest pay something in the shape of taxation on commodities, and owing to the rule of productiveness it is impossible to make any discrimination. An indirect tax is not felt so much because it is paid by instalments, and it is popular with Governments because, except at its first imposition, it is concealed in the cost of the commodity. At present, when the increasing burden of taxation is beginning to be felt, instead of facing the possibility of readjustment or economies, or at least some check on new expenditure, people try to find sources that have not been tapped, and things that will bear new or additional taxation. But all this manipulation does not touch the central fact that all these taxes must be paid out of the income of some persons, and that the most these reforms will effect is a redistribution of the burden between different classes. Taxation cannot be remitted in one direction without being increased in another. In considering the equities of taxation between typical classes we ought properly to take account of any special benefit that may be derived by some class from the corresponding expenditure. When benefit can be apportioned equality of

expenditure is as much an ideal as equality of taxation—in fact, the two must be taken together. In many of the objects of national expenditure there is no special class benefit, but in this case the real burden of taxation should be recognised, and instead of trying to disguise the incidence of taxes we should try to make it quite clear to the person who pays and to everyone else. This is really involved in the idea of the certainty of taxation, and Adam Smith declared that a considerable degree of inequality was to be preferred to a small degree of uncertainty. It is an old saying that the greatest source of revenue is economy, and the first requisite for economy is the recognition of the burden of taxation.

Professor Nicholson, in the course of his third lecture, said: All the powers of local authorities ought to be looked on as delegated by the central Government, and the extent and degree of the delegation is not a question of principle, but of expediency. Similarly there is no hard and fast line between national and local finance. The State may delegate certain functions to the local authorities, and provide the necessary funds from national revenues, or it may compel the authorities to provide the funds out of local resources. A rate is as much a tax as if raised by Parliament, and it follows that the principles of taxation are applicable to rates. Rates are a species of more or less disguised income-taxes, but the amount of the income is supposed to be shown by the ownership or occupancy of certain forms of rateable property, and the amount of the tax is varied according to certain ideas of equity or common-sense justice. As a rule, more attention is paid than is possible in national finance to the benefit derived, but in some of the oldest and most important rates the benefit principle cannot be applied—*e.g.*, the poor rate. In estimating the total burden of the rates on any typical class, we should estimate the benefit directly or indirectly received by that class from the expenditure. In local finance, the distinction between “onerous” and “beneficial” expenditure is of great importance. If any locality imposes exceptional onerous charges, or, on the other hand, confers exceptional benefits, the effect is seen in the migration of capital and labour. In the report of the Royal Commission on local taxation it is said that the services which may be properly regarded as national and onerous are poor relief (including lunatic asylums), police, education (elementary, secondary, and technical), main roads, and sanitary inspection, and the practical question is whether it is preferable to provide the funds from local or national taxation. This, again, involves two questions—first, what taxes are suitable for local purposes? and, second, will the service be better performed if the charge is wholly or partially met out of local revenues? Indirect taxes, such as excise or customs duties, not being suitable, it seems as if we must resort to

a local income-tax, and if we take the most important and instructive example, the English poor rate, we find it was originally intended to be a local income-tax. But the two great difficulties that are always alleged against the possibility of a local income-tax at once appeared. How were the incomes of non-residents to be treated, and how were local incomes in general to be assessed? Since in rural parishes incomes were mainly derived from the ownership or occupancy of land, rent came to be used as the measure of income, and the income was taxed where it was obtained. In the same way, for practical convenience the rates in the towns came to be levied on the annual value of the property.

The true final incidence as between owner and occupier is hard to determine. In Scotland most of the important rates are divided between the owner and the occupier, but the report of the Commission states it is probable that the final incidence does not differ from that in England. In Scotland the method of rating according to “means and substance” was allowed by the Poor Law Act of 1845, but here also the practical difficulties of localising income led to its abandonment. Attempts, however, were made to remedy some of the gross inequalities of the rating system by the method of classification, and by the allowance of exemptions in calculating net value, &c. The theory at the basis of these modifications seems to be that the rates are supposed to conform to the idea of an income-tax, and not to the idea that the community has a kind of customary right to a share in the rental of property, and this is also shown by the general acceptance of the principle of the Agricultural Rates Act. A local rate is a species of tax, and not a species of rent. If special benefits are obtained, special rates should be levied, and the owners of property should pay for a rise in value due to local improvements. If some incomes are taxed for local purposes from which no special benefit is derived, then on the principle of equality all similar incomes should be taxed as far as possible. Owing mainly to the anomalies of the present rating system, and its want of conformity to a local income-tax, subventions have been granted from the Exchequer for certain purposes; but there are great difficulties as regards the allocation of the grants, and the general report of the Royal Commission recommends a change in the principles applied. Local taxation, however, must still be mainly relied on for purely local purposes, and for that reason a reform of the rating system is desirable. The present system is greatly complicated by legal fictions and highly artificial rules, which are necessary to make some kinds of profits liable to rates, and yet different classes of income are taxed in a very disproportionate way. We ought not to overrate the practical difficulties of reform, since all tax systems from the point of view of ideal equity are necessarily rough and imperfect.

**Edinburgh Chartered Accountants Students' Society.**

A joint debate between the Edinburgh University Scots Law Society and the Edinburgh C.A. Students' Society was held on the 27th ult. in the hall at No. 27 Queen Street, Mr. J. A. Robertson-Durham, C. A., presiding.

The question was, "Has the Companies Act, 1900, proved of substantial benefit to the investing public?" Messrs. Alexander Clapperton, C.A., and A. E. S. Thomson, M.A., LL.B., led on the affirmative, and Messrs. D. Oswald Dykes, advocate, and Maitland Smith, C.A., on the negative. These were supported by Messrs. G. D. Valentine, advocate, and J. R. Austin, solicitor, respectively. The debate was summed up by the Chairman, who narrated some of his experiences of the working of the Act. A vote was then taken, when 19 voted for the affirmative and 22 for the negative. This being the first joint debate between the two Societies, Mr. William Annan, C.A., expressed the hope that in view of the success of the meeting the Societies would be induced to hold one annually. Mr. George Rennie, the Secretary, responded on behalf of the Scots Law Society. A vote of thanks to the Chairman was heartily accorded.

**The Profession in Ireland.****The Institute of Chartered Accountants in Ireland.**

THE quarterly meeting of the Council was held at the offices of the Institute, 4 College Green, Dublin, on the 7th ult., Mr. Robert Stokes (President) in the chair. There were also present Messrs. Edward McCarthy, J. E. Magill, M. Crowley, Robert Walsh, John McCullough, W. G. Peterson, J. Harold Pim, J. H. Woodworth, John M. Kean, and Cecil G. Mitchell (Assistant Secretary).

The following were declared to have passed their respective examinations, viz.:—

*Preliminary.*—Alfred G. Fox, Dublin; C. Jefferson, Dublin; R. Jefferson, Dublin.

*Final.*—D. T. Atkinson, Belfast; Hugh Boyd, Belfast; C. H. W. McCullough, Belfast; N. C. Peterson, Dublin; W. C. Peterson, Dublin; W. W. Walker, Belfast.

Two candidates in the Preliminary Examination and three in the Final failed to satisfy the examiners.

The following were elected Associates, viz.:—Wm. Given Kennedy, Belfast, and David T. Atkinson, Belfast (not in practice); J. Boyes Cooper, Dublin (in practice).

Michael J. Donnelly, Belfast, was granted an exemption certificate from the Preliminary Examination.

Arthur Henry Muir, Belfast, was elected a Fellow.

The usual quarterly business having been transacted, the meeting terminated.

**Presentation of Address to the Viceroy.**

An address was presented to the Viceroy from the Institute of Chartered Accountants in Ireland on the 27th ult. The deputation consisted of Mr. Robert Stokes (President), and Mr. J. Harold Pim, Hon. Secretary, with the following members of the Council:—Messrs. John McCullough and Mischael Crowley.

The President read the address as follows:—

May it please your Excellency, we, the President and Council of the Institute of Chartered Accountants in Ireland, beg to tender to your Excellency and to her Excellency the Countess of Aberdeen a loyal and cordial welcome to Ireland. We respectfully desire to congratulate you upon your appointment to the exalted office of Viceroy of Ireland, and to assure you, as the representative of his Most Gracious Majesty King Edward VII., of our unswerving loyalty and devotion to his Majesty's Throne and person. The Institute of Chartered Accountants in Ireland, which we represent, was incorporated by Royal Charter on 14th May 1888. The profession of accountants is an important one, and their functions are of great and increasing significance in respect of their employment under decrees in Chancery, in the winding up of companies, in bankruptcy, or arrangements with creditors, and in various positions of trust under the Courts of Justice, as also in auditing the accounts of public companies and otherwise. The business of the accountant requires for its proper prosecution considerable and varied attainments, while it comprehends all matters connected with arithmetical calculation or involving investigation into figures; it also ranges over a much wider field, in which a considerable acquaintance with the general principles of law is quite indispensable. It is obvious that to the due performance of a profession such as this a liberal education is essential, and the objects of this Institute are to secure, by strict examinations and otherwise, the education and standing necessary to maintain the efficiency as well as the respectability of the professional body in Ireland. Our Institute is much interested in the extension and development of the commercial and industrial enterprise in Ireland. We trust, therefore, that your Excellency will be pleased, during your tenure of office, to still further promote that commercial prosperity so essential to our country's welfare, and in the furtherance of which your illustrious predecessor, during his administration, displayed a marked interest. In conclusion, we wish your Excellency a prosperous and lengthened tenure of office as Lord Lieutenant, and



earnestly trust that your administration may be specially marked by increased prosperity in Ireland.

Signed on behalf of the Council,

ROBERT STOKES, President.

JOHN M'CULLOUGH, Member of the Council.

J. HAROLD PIM, Hon. Secretary.

His Excellency, in reply, said: Mr. President and gentlemen, I cordially recognise the loyalty of your greeting to the representative of his Majesty the King, and I appreciate very heartily your kindly words of personal welcome addressed to Lady Aberdeen and myself. The recital which this address contains and some of the leading functions of the very important calling to which you belong is certainly suggestive as well as highly descriptive, and I observe that you conclude this portion of your address as to the functions of such a body as yours by the words "and otherwise." That certainly is a very comprehensive, and, if I may say so, a needed addition to your description of your work, because, of course, it extends in every direction. I confess that I regard the attainments and the performances of those who are experts in the handling of figures with admiration mixed with wonder, and those sentiments are enhanced by the fact which I must also admit that I myself have always found two things almost equally uncongenial—the keeping of accounts and the keeping of money. But it, of course, is absolutely essential that accounts must be kept, and therefore I, in common with the general community, appreciate and understand the value of the administrations which you and your colleagues here can afford and provide. I can easily understand that the existence of such an Institute as yours is of very real and practical benefit in maintaining the high standard of efficiency of your calling, and that, indeed, is a matter which I may again say the public at large have a very real interest in, because it is of paramount importance that the utmost confidence and reliance in every sense should be reposed in those who have the arranging of finance. I am sure that your allusion to Lord Dudley in regard to his warm and sincere interest in the welfare of Ireland is correct and just, nor shall we be found behindhand in that respect. I shall not here even touch upon the share which Lady Aberdeen has been able to take in the promotion of the industrial interests of the country. I shall merely venture to affirm that we do from our very hearts use, regarding Ireland, the greeting, "We wish thee prosperity."

The members of the deputation having been individually presented to their Excellencies, the proceedings came to an end.

## Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th	..	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	..	4%

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#### CITY OF CARDIFF.

THE Council invite applications for the appointment of a City Treasurer and Controller of Accounts and Superintending Assistant Overseer, at a commencing salary of £750 per annum.

Applications will only be entertained from those who have a thorough practical acquaintance with the work of Municipal Finance and Accountancy.

The gentleman appointed will be required to devote the whole of his time to his duties, and to take the entire responsibility, under the Finance Committee, of the whole of the Accounts and Finances of the City relating to every department of the Corporation, in accordance with a scheme to be approved by the City Council.

The engagement will be subject to determination upon three months' notice from either side.

Applications must be between 35 and 45 years of age.

Applications, on forms to be obtained at my office, to be delivered to me and endorsed "City Treasurer and Controller," not later than the 4th April 1906.

Canvassing directly or indirectly will be an absolute disqualification, but candidates are at liberty, if they choose, to forward to members of the Finance Committee copies of their applications and testimonials not exceeding five.

(By order) J. L. WHEATLEY,

Town Hall, Cardiff.

Town Clerk.

14th March 1906.

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### Leading Articles.

### Representative Directors.

OUR contemporary *The Law Journal*, in commenting upon the recent decision of Mr. Justice WARRINGTON in *Boecheok Proprietary, Lim. v. Fuke*, raises a question of considerable interest to all who are concerned in the practical details of company management. Although there is no provision to that effect in any of the Companies Acts, it has become very general for companies, in their articles of association, to stipulate that no person shall act as a director of the company without holding a substantial stake therein. From some points of view there is doubtless a good deal to be said in favour of such a provision, in view of the fact that the professional guinea-pig is not even yet by any means extinct. Nevertheless, it is quite conceivable that in certain cases the owner of a ver-

large proportion of the capital of the company may be either unable or unwilling to act as a member of the board, and in such cases—assuming only the holding is sufficiently important—it seems only equitable that he should be entitled to nominate at least one director, or perhaps even more. In cases where a substantial stake in the capital of a company is held by another company—which, owing to its impersonal nature is, of course, physically incapable of occupying a seat upon the board—the argument in favour of representative directors seems, if anything, even stronger. Yet the disadvantages of such an arrangement are at least sufficiently important to be worthy of careful consideration. They are (first) that a director so appointed is naturally apt to consider the interests of the party appointing him as being at least as much entitled to his consideration as the interests of the company; and, in the second place, the principle lends itself to the practice of one company acquiring, unknown to the general public, the control of another company upon lines which are quite familiar in the States, but looked at somewhat askance in this country.

In the *Boechoek Proprietary Company's* case the disadvantages to which we have just drawn attention may, it is thought, be regarded as having been non-existent. The question was as to whether the liquidator of a company owning shares in another company was entitled, as such, to occupy a seat upon the board of the latter, even although he held no personal pecuniary stake in its capital. It is obvious that those interested in the liquidation might expect to derive very considerable benefit from their liquidator occupying a seat upon the board of a company whose shares represented

a substantial asset in their estate, and the question as to whether the liquidator so appointed would consider the interests of his own estate first or would duly and impartially discharge the duties of his office was never raised, and may therefore be taken as not to have been in question. The point at issue was entirely as to whether or not the liquidator had duly qualified as a director within the meaning of the articles of association; and in this connection the precise wording of the clause governing the matter was, of course, of paramount importance. In the case of the *Boechoek Proprietary Company, Lim.*, the clause in the articles was a somewhat unusual one, that the director should hold his qualification shares in his own right; and thus Mr. Justice WARRINGTON'S decision in this case may be said not to be of very general application. It was held long since that it was not absolutely necessary that the director should be beneficial owner of the shares under such circumstances, but, on the other hand, a bare legal title would, of itself, now seem to be of but little use. If the director's name is on the register of the company without qualification, the company would appear to be bound by its own registration, and not to be in a position to look behind the register to find out whether the director is the beneficial owner or not—that is to say, if he hold the shares in such a way that the company can safely deal with him as the owner of those shares, that is enough for any purpose with which the company is concerned. But if the director has been placed upon the register in some qualified capacity—as, for instance, in this case, in his capacity as liquidator—his Lordship held that it was clear that he was not registered as the owner of such shares in his own right. Presumably, the same rule would

apply in the case of a person registered as executor of a deceased shareholder. In such cases it would appear the company is put on inquiry, and cannot safely deal with the shares as being the director's, although the legal title may in fact be vested in him. A somewhat obvious reflection upon this ruling is that it is quite improper for a company to grant any form of qualified registration such as would imply the existence of a trust, and that the whole difficulty would never have arisen had this somewhat elementary point been duly appreciated by those more immediately concerned. The practice of improperly registering the transferee in a representative capacity is, however, so common that its direct bearing upon the decision in question can hardly be too widely known.

In the meantime, of course, the equitable claims of a large holder to appoint his own representative to a seat upon the board in his stead remain unaffected, save that presumably such holder must, if he desires to be in order, trust his representative sufficiently to make an absolute transfer to him of his qualification shares.

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#### Municipal Accounts.

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IN our last issue we reproduced a full report of the proceedings at the Conference of Chambers of Commerce, Industrial Associations, Municipal Corporations, and Local Authorities, which was held on the 5th inst. with the object of discussing the recommendations of the Joint Parliamentary Committee on Municipal Trading of 1903, and the best means of securing their adoption as regards the independent professional audit of municipal accounts and the standardisation

of accounts. In view of the great importance of the subject, however, we think it necessary to devote some further space to the consideration of the matter editorially, in spite of the difficulty which attaches to the impartial discussion of so controversial a subject.

We may say, in the first place, that the Conference appears to us to be ill-timed. It was held either much too late or a good deal too early. If there be any general feeling that the recommendations included in the report of the Joint Parliamentary Committee, which was published nearly three years ago, ought to have been at all events seriously considered by the Local Government Board, the proper time for organising a protest against the dilatory tactics of that department was certainly something nearer March 1904 than March 1906. The late Government, after much delay, ultimately announced its intention of taking no action on this report, but, so far as we are aware, no collective protest was made at the time by the bodies primarily interested. Now that there has been a change of Government, and the present President of the Local Government Board *has* taken steps to deal with the whole question in his own way, it seems to us a little late in the day for a Conference to be convened to urge that what is now obviously a stale report should be at once acted upon.

Probably nothing would have been heard of this Conference were it not for the recent appointment of a Departmental Committee to consider certain aspects of the question, and those alone; but in so far as the object of the Conference was to deal in any way whatever with the future findings of this Committee, it is obviously premature. It is, moreover, we think, doomed to failure, in

that, in the nature of things, there is not the least chance of the *personnel* of that Committee being now altered. Our own view, which we expressed at the time the constitution of the Committee was announced, was that it consisted of too many officials, both Government and municipal, and too few independent members; but, however that may be, we can imagine nothing more futile than the resolution passed on the 5th inst., that the Conference, while welcoming the Departmental Committee recently appointed, is of opinion that it should be strengthened by the addition of independent members connected with practising accountancy. We make this statement in spite of the views which we hold, that all the questions at issue are largely technical questions upon which the advice of independent experts is the only advice that is likely to be of much real use, because it seems as though an effort is being made by interested parties—whose sole desire is to attack municipalism—to get the assistance of the accountancy profession. Most naturally accountants are interested in the movement that has taken place of recent years in favour of substituting an efficient professional audit of the accounts of local authorities for the existing inefficient statutory audit; but this is a point upon which practically everyone is agreed except the officials of the Local Government Board, who are certainly not strong enough to force a Government audit upon the “major” municipalities, or they would have done so long since. The position being what it is, it seems scarcely necessary for the profession to adopt a partisan attitude in order to secure their legitimate ambition of being recognised as the proper parties to conduct these audits. On the contrary, if professional accountants allow

themselves to be identified with the anti-municipalists, the municipalists will not unnaturally be reluctant to hand over to them even such a measure of control as an audit recognised by statute would impose. Their fears might be groundless, but they would be eminently reasonable. Moreover, as we have repeatedly pointed out in these columns, so far as accountants are concerned there is no political question at issue. An effective audit is required not with a view to checking municipal progressiveness, nor yet with a view to advancing it, but in order that all sides may be able to be placed in possession of the true facts certified by competent and independent auditors. And it seems to us that it is both unwise and improper for professional accountants, either individually or collectively, to identify themselves with either extreme in a controversy which, however acrimonious it may be, at least so far lacks the fundamental basis of all reasonable debate—namely, a knowledge of the real facts of the case. Until the accounts of local authorities are intelligently, accurately, and completely stated, it is sheer waste of time for anyone to inquire whether the results and tendencies of municipal activity during the past ten years or so have been beneficent or the reverse.

This statement of the position is, of course, likely to prove unpalatable to both sides, but in the long run its reasonableness will doubtless be generally admitted. An attempt has been made by the representatives of 48 Chambers of Commerce, 14 Industrial and other Associations, 4 Associations of Professional Accountants, and 20 Municipal Corporations and other local authorities—no very imposing number at the best—to discourage in advance the findings of the recently appointed Departmental Com-

mittee, but even they were by no means unanimous in what they wanted, while the grievances of the majority, whether real or imaginary, had nothing to do with the subject at issue—the form and audit of municipal accounts. That being so, we would ask in all seriousness whether it is desirable that accountants should take further part in such a course of procedure without at least taking some steps to ascertain what the general opinion may be. The one point of purely professional interest which arose at the Conference was the persistent attempt made by Mr. R. B. MILLER, L.A.R., of Edinburgh, to secure for Scottish and Irish accountants the right to audit the accounts of municipalities in England and Wales. This is a sample of the unfair competition to which we have drawn attention more than once during the past few weeks, and it also throws a side-light upon what some of the representatives attending this Conference hope to gain as a result of their present agitation. That the profession in England as a whole has anything to gain by throwing in its lot with either the opponents or the advocates of all forms of municipalisation is, it seems to us, doubtful in the extreme; but, however that may be, such an attitude is, we think, far too sweeping to be adopted off-hand, without careful and general discussion.

#### **A Receiver and Manager in Chancery.**

LECTURES by members of the Council of the Institute have of late years been rather infrequent, so that the paper on "The Work of the Receiver and Manager in the Early Days of his Appointment," read by Mr. W. H. Fox, F.C.A., at a meeting of the Chartered Accountant Students' Society of London, and reproduced in our issue of the 13th January last,

would be most welcome, even if the exceptional interest attaching to the subject selected, and the ability displayed in its handling, did not at once place the paper far above the usual level of such productions. This is, so far as we are aware, by far the most finished of Mr. Fox's productions, and possessing as it does the merit—particularly unusual in papers on Receiverships—of being entirely practical, it will be found of the utmost value not merely to students, but also to practitioners.

From the student's point of view the ordinary routine work, usual in the case of a receivership in Chancery where the receiver is also appointed the manager of the business, is clearly described in as much detail as seems practicable. From the point of view of the practitioner the paper will be found especially of value, in that it draws attention to many little points which might otherwise quite conceivably be overlooked until it was too late to deal with them with advantage. Under this heading may be included the reminders as to the desirability of a stocktaking as soon as may be after the date of the receiver's appointment; of an inquiry into the existence of insurance policies of all needful descriptions; of the desirability of at once obtaining possession of and examining all documents of title of importance; and of opening a separate banking account with regard to each estate. On the subject of stocktaking, we may mention that the inventory should not stop short with the stock-in-trade, but should extend to all furniture, fixtures, fittings, plant, and machinery which the receiver is in a position to sell; and an independent valuation of these commodities is desirable, so that the receiver may become at as early a date as possible well informed as to the exact position of affairs and the price that he may reasonably

expect to exact from a purchaser of the business as a going concern. Indeed, speaking generally, we think it desirable that even the inventory of the stock-in-trade should be taken by outsiders, for in the nature of things the receiver as a rule knows but little of the ability and reliability of those who have formerly been employed by the company, from among whom he has, as a rule, to select his own sub-managers.

With regard to insurances, these should cover not merely risks of fire, but also all other risks that a reasonable business man would wish to provide against, such as workmen's compensation, and, where vehicles are employed, the usual driving risks. As to preferential payments, these are, of course, only payable out of moneys in hand; and not out of the first moneys received by the receiver, but only out of the surplus moneys remaining in hand after meeting all proper payments chargeable in his account. The point is often overlooked in practice, and is, indeed, not mentioned by Mr. Fox in the course of his paper, that, speaking generally, it is not for the receiver to admit and pay preferential claims. Rather should he leave the Court to deal with the matter in the usual form of an inquiry into encumbrances which rank before the debenture-holders' claims against the funds lodged in Court by the receiver on the passing of his account. Where, however, the receiver is retaining the services of employees of the company, it is generally expedient that he should not keep them waiting for arrears of wages or salaries; and, so long as he has satisfied himself that these payments are properly preferential, they are usually allowed as payments in his account as being payments necessary to enable him to carry on the busi-

ness as a going concern. Under this same heading of payments which are practically necessary, although perhaps not legally payable, may come the claims of gas, water, and electricity undertakings, which are entitled to cut off supplies if arrears due to them up to the date of the receivership are not punctually paid; and as the receiver does not rank as a new occupier he cannot himself obtain supplies of these commodities save on the terms of paying the old account. If, therefore, such further supply is necessary for the continuance of the business, the payment of the old account is justifiable, but not otherwise.

Another very useful hint is as to the placing of the defendant company in voluntary liquidation. This is, of course, not always necessary, as the company's embarrassments may be purely temporary, and a further issue of new shares or of debentures may place the company in possession of sufficient funds to enable it to pay out the receiver and continue business upon the previous lines. In the majority of cases, however, the embarrassment of the company is too serious to admit of anything less heroic than a reconstruction scheme, and this, of course, like any ordinary winding-up, requires that the old company shall go into liquidation. It is undoubtedly in the interests of the debenture-holders that there should be appointed a liquidator who will not throw any difficulties whatever in the way of the receiver's realisation of the assets; hence, in the majority of cases it is expedient that the receiver should be appointed to act in that capacity. If there are not sufficient assets to provide for the payment in full of the debenture-holders, this, of course, means that, except in so far as the liquidator may insist upon some small payment as a condition of making calls or executing conveyances

by the company, he can recover nothing for his services, but will, on the other hand, probably have to defray certain expenses necessarily attendant upon the liquidation formalities. There is not, as a rule, much difficulty in arranging for these facts to be taken into consideration when the receiver's remuneration is assessed, but for what it is worth it may be pointed out that with the consent of the debenture-holders it may be arranged that a fixed sum be allowed to the liquidator as a charge to rank in front of the debenture-holders sufficient to defray all necessary out-of-pocket expenses; and perhaps, upon the whole, this is the more convenient arrangement.

The *pro formâ* file of proceedings appended to Mr. Fox's paper will be of considerable interest to students, as indicating to them shortly the normal course of the legal proceedings. It may be questioned, however, whether in point of fact it is usual for the receiver to keep such a file. He is not as of right entitled to copies of all the documents referred to. Upon one point, however, there is likely to be little doubt, and that is as to the desirability of the receiver keeping a copy of every affidavit sworn by him, not merely for the somewhat obvious reason that he should have in the office a permanent record of such important matters, but also because the affidavit in one receivership often proves extremely useful as a suggestion of what may usefully be done in other similar cases. The practical difficulty is that frequently these affidavits are prepared in a hurry, and thus the opportunity of taking and keeping copies does not always conveniently arise. With a little foresight, however, this difficulty could, no doubt, be readily got over, save in the most exceptional cases.

It will be seen that in the above comments

we have confined ourselves chiefly to those points concerning which it has occurred to us that Mr. Fox's paper might have been amplified. It must not, however, be on that account supposed that the matters which we have selected for criticism are fairly representative of the paper as a whole. Viewed as a whole, the paper is undoubtedly one of the most interesting, and one of the most instructive, that has appeared in these columns of recent years, and is the more welcome as the information to be derived from most legal text-books on the subject is of little or no use to accountants or accountant students for practical purposes, however valuable it may be for those who have charge of the legal proceedings in such matters.

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### Some Legal Terms.—II.

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#### Tort, Crime, Felony, Misdemeanour, Action, Prosecution.

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[BY OUR LEGAL CONTRIBUTOR.]

NOTHING is more common, not only among students, but people in general, than the misuse of the terms "Prosecute" and "Prosecution." A prosecution seems to be regarded as a kind of universal panacea for all legal injuries, and, should the question be raised what is the proper legal remedy against a person, under a given set of circumstances, the almost invariable answer, no matter what the nature of the wrong or the redress sought may be, is, "You should prosecute him," or bring him before the Magistrate, or, more colloquially, "the Beak." Some, indeed, have heard of the remedy by way of "Action," but their notions on the subject are of the vaguest, and as to the respects in which it differs from a "Prosecution," or where one is the proper remedy and where the other, they are totally ignorant. Again, whilst all are acquainted with the term "Crime," but few



could give a successful definition even of it, or distinguish it from "Tort," of which latter term indeed not one in ten have ever heard.

Now, in order to understand wherein lies the distinction—and a very important one it is—between "Action" and "Prosecution," it is necessary, in the first place, to get a clear idea of what is meant by the underlying terms "Tort" and "Crime," under one or other, and in some cases under both of which heads all legal wrongs arising independently of contract may be classed.

To deal then first with "Tort." A tort, or civil wrong, may be said to consist in the infraction of some right inherent in an individual, and which infraction entitles him, should he in his discretion see fit to demand it, to damages or compensation.

A crime, on the other hand, although also generally implying the infraction of such a right is a legal wrong viewed as a breach of an absolute duty owed by the wrongdoer to the State or society, and is pursued with the object of punishment at the suit not of the individual wronged, but at that of the Sovereign or his subordinates. In support of this view of a crime, it may be mentioned that all indictments in England conclude with the words, "Against the peace of our Sovereign Lord the King, his Crown, and dignity."

It must not, however, be supposed that it is in all cases open to the individual wronged to elect whether a given wrong shall be pursued as a tort or a crime. In many instances the law decides this for him. Suppose, for instance, a man suffers a malicious prosecution, or a false imprisonment, he is bound to proceed as for a tort, and to seek redress by way of damages from the wrongdoer.

Some wrongs are capable of being regarded in a double aspect—*i.e.*, both as crimes and torts—in which case a criminal or civil remedy, or both, are available. Such a wrong, for instance, is an assault or a libel, which may give rise either to a civil action at the suit of the party injured, or to a prosecution instituted by the Crown, or to both.

From its thus being possible in such cases to regard the same legal wrong both as a crime and as

a tort, an interesting question has arisen in our law, which even now can scarcely be deemed satisfactorily settled. It is this, whether where a wrong of this kind has been committed the person injured is bound, before seeking satisfaction as for a tort, to first vindicate the violation of the public peace by treating it as a crime and instituting a prosecution. For instance, suppose a theft to have been committed, must the person from whom the property was stolen first prosecute the thief before bringing an action to recover the property?

According to the latest decision on the point, *Wells v. Abrahams* (1872, L.R. 7 Q.B. 554), the rule that in such a case the crime must first be prosecuted exists, but the manner in which it can be enforced is nowhere discoverable. It is clear, however, that the rule has no application where proceedings are taken against a person *other* than the wrongdoer (*White v. Speltigue*, 13 M. & W. 603), or brought by a person other than the party wronged (*Osborn v. Gillett*, L.R. 8 Ex. 88). So, too, the rule only applies in the case of a *felony*, not in that of a misdemeanour.

This reference to the terms "Felony" and "Misdemeanour" next renders necessary an inquiry into their meaning. Now crimes may be variously classified, but it will be found that in English law they have been grouped according to their final consequences into Felonies and Misdemeanours, and, according to their mode of trial, into Indictable and Non-Indictable Offences.

Let us first consider the division into Felonies and Misdemeanours. The term "Felony" was originally applied only to those more serious crimes which in old days occasioned a total forfeiture of either lands or goods, or both, at common law. Capital punishment seems to have by no means originally entered into the definition of felony, but as death was the punishment for all the more serious crimes or felonies, the term in the course of time became appropriated to all such crimes as were punishable with death.

The term "Misdemeanour" strictly includes all crimes other than felonies, but although this is

strictly speaking so, yet in practice the term is generally confined to all *indictable* crimes other than felonies, non-indictable crimes being simply termed "Offences." The original distinction between Felonies and Misdemeanours just referred to, however, no longer exists, for in 1870 an Act was passed abolishing forfeiture for felony, and the only important respects in which, at the present day, a felony differs from a misdemeanour appear to be that it is a crime to conceal a felony, that a felony must be pleaded to personally, that the jury trying a felony may not separate before verdict, and that the prisoner on conviction for felony has a right to be heard before judgment.

We are now in a position to explain the difference between the terms "Action" and "Prosecution." Should it be desired, and legally possible, to regard a wrong as a "Tort," or civil injury, and to seek redress in damages or restitution, then the procedure will be by way of "Action" in a Civil Court. On the other hand, should it be decided, or only legally possible, to treat the wrong as a "Crime," and to secure its punishment, the procedure will be by way of a "Prosecution" in a Criminal Court.

The mode of the "Prosecution" will depend on whether the crime in question is an "Indictable Offence"—*i.e.*, such as may be the subject of an indictment before a grand jury—or not. Should it be of the former description, then—in most cases after a preliminary investigation before Justices or a Magistrate, in order to see whether the accused should be committed for trial or not—a "Bill of Indictment" or formal written accusation will be presented against him before a grand jury, either at the Assizes or Quarter Sessions, to be followed, in the case of the grand jury's finding a "true bill," by a trial before a Judge and jury. Where the crime is of a non-indictable nature, the trial will take place summarily—*i.e.*, the prisoner will be tried before two or more Justices, or a Stipendiary Magistrate, without the intervention of a jury.

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### Weekly Notes.

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**"Incorporated Accountants."** In our Law Reports this week will be found an account of the hearing of a cross-motion before Mr. Justice Warrington in *The*

*Society of Accountants and Auditors v. The London Association of Accountants*, which will be found of considerable interest.

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**A Little Study in Remedies.** The Hanley magistrates, in the course of a recent decision, are reported to have said that "anyone who objects to riding in an overcrowded tramcar has his own remedy—he can 'get out.'" Commenting on this point, *The Financial News* humorously remarks, "Similarly, anybody who 'objects to burglars has his own remedy—he can give 'up housekeeping. How simple these things are when 'the light is turned upon them!'"

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**Foreign Companies.** It is not in every country that the truly British policy obtains of allowing foreign companies not incorporated under their own laws to trade without let or hindrance with the benefit of limited liability, and without complying with provisions which Parliament has declared to be necessary for the protection of investors and creditors. For instance, of late Belgium has been somewhat embarrassed by the increasing number of foreign companies carrying on business in Brussels, and as a result a Bill has been introduced in the Belgian Parliament for levying a tax of 2 per cent. on the profits of these companies. Our contemporary *The Financial News*, commenting upon the facts, inquires why, if Belgium does not want these companies, it does not prohibit their advent altogether? We may point out, however, that without going so far as this it is conceivable that the Belgian Government may be at a loss to understand why in the name of all that is reasonable these companies should expect to receive all the benefits of residence in their country without contributing their quota towards the expenses of its upkeep.

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**New Companies and Preliminary Agreements.** It is, of course, settled law, so far as this country is concerned, that there is no obligation whatever upon the part of a new company to adopt any contract that may have been entered into by trustees on its behalf prior to its incorporation; and indeed it is clear that the directors of such a company ought in all cases, before adopting provisional contracts, to examine them and arrive at an independent judgment as to whether they be advantageous from the point of view of the company. This duty falls upon directors, even although the company's

articles of association may expressly authorise or require the directors to adopt the contract in question. In the United States, however, we understand that the rule is much more lax, and is distinctly in favour of holding the company liable on a contract of date prior to its registration wherever that contract has been ratified or adopted, which ratification or adoption may be shown either by express resolution of the managing body or by accepting the benefits or fruits of the contract. Such a doctrine is, of course, extremely dangerous to shareholders, in that it may in many cases make the directors, whom they naturally look upon as their protection from the rapacity of company promoters, powerless to save them from the consequences of an altogether improvident bargain. At the same time it may perhaps be questioned whether the American practice is, after all, so very different from the British, and whether the duty of forming an independent judgment imposed by law upon the English director is one which imposes any very serious restraint upon his judgment, or any serious liability upon his pocket.

**Municipal Profits.** On the question of comparison between the profits of municipal corporations and of similar undertakings owned by private capitalists, our contemporary *The Municipal Journal* states that anti-municipal traders ignore the all-important question of charges, and insist on testing the municipal electricity or gas works by its Balance Sheet, never comparing charges, but always profits. We entirely agree that for any fair comparison to be made it is important to bear in mind the price charged for the commodity as well as the profits claimed to have been earned by its supply, but, if our recollection serves us, the chief complaints that have been raised against municipal trading undertakings have not been so much that their paper profits are less than those of privately-owned undertakings as that their true profits have been less than their paper profits. This all-important issue certainly ought not to be obscured by the wholly irrelevant one of a comparison of the prices charged for the service. We may add that if any privately-owned undertaking cares to supply a commodity in general request, such as gas or electricity, at less than cost, the general public, as opposed to the investors in that particular enterprise, have certainly no right to complain, for the ordinary principles of unfair competition do not apply, in that competition is virtually

non-existent. But if a local authority supplies such commodity at less than cost, the ratepayers have undoubtedly a right to complain, because in the long run the loss must inevitably fall upon them or their successors; and, if they take a proper view of their responsibility, it is certainly due to them to safeguard their successors against losses arising in their time which have been concealed by improper accounting.

**Post Office Savings Bank.**

Replying recently to a question in the House of Commons by Dr. Macnamara, the Postmaster-General delivered a written answer, from which we gather that the total amount due to depositors in the Post Office Savings Bank at the 31st December 1905 was estimated to have been £152,113,000. The exact figures cannot, of course, yet be given, but the estimate is probably fairly accurate. The amount of Consols held on account of the fund at the date mentioned was £60,715,140, the average price being £102 16s. 5d. per cent. It is remarked that the preparation and publication of the Balance Sheet containing a valuation of the securities held by the Post Office Savings Bank was discontinued in accordance with the recommendations of the Select Committee of 1902, who considered such a return to be misleading, and Mr. Buxton states that he is not aware of any sufficient reason for reversing that decision. We are told that the deficiency in the Income Account for the year ended 31st December 1905 is estimated at £92,032. The system of withdrawals on demand, which came into force on the 31st July 1905, has been found to be of great convenience to small depositors, and the total amount withdrawn under the system to the end of the year was £1,270,163.

**The Alien Company in England.**

Before the Institute of Bankers, last week, Mr. Harold G. Brown delivered a most interesting lecture dealing with the position of foreign banking and other companies in England, a full report of which appeared in *The Financial Times*. The lecturer, at the outset, pointed out that from early times encouragement has been given to foreign traders and manufacturers in the establishment here of their businesses, and, gradually, aliens have been relieved of the restrictions and limitations originally imposed upon them, until, since 1870, they have become entitled to all the rights and immunities of citizens with a few unimportant exceptions. The

only matter in which the foreigner had any ground for complaint was, Mr. Brown thought, in respect of income-tax, where he had been unduly penalised. The following appear to be the grounds upon which Mr. Brown relies:—

"If the manufactured products of his business be sold in this country, he has to bear income-tax charged upon the difference between the selling price in this country and the cost price to him of the article sold, and this, although in many cases the difference between the selling price of that article at the port of shipment to England and the selling price in London would be little more than the cost of freight, insurance, warehouse expenses, and selling commission which he has to pay, and although he is often subjected in his own country to a heavy and in some cases an oppressive income-tax upon the entire profits of his business."

As regards the extent to which foreign companies exist in this country it was pointed out that the number of foreign banking concerns carrying on business in the United Kingdom exceeds 48, with a paid-up capital of £108,000,000. As to the position of British companies abroad, in no instance are they exempt from local restrictions or disabilities arising from the law of the country where they operate, while in some cases extra restrictions are placed on them. Any reform, therefore, of our own laxity will not lack precedent. Illustrative of the manner in which the foreign company is free from the special limitations imposed upon an English corporation, it was stated that such a company can trade in England without in any way disclosing that it is a *limited* company! In the way of remedies for existing abuses the lecturer suggested that all foreign companies should be compelled to add the word "*limited*" after the firm name, a registered office in this country should be compulsory, copies of the charters of incorporation should be filed at Somerset House, in addition to statements of capital and lists of members. The winding-up rules and regulations should be made to apply to these concerns, and prospectuses issued in England by foreign companies should be brought within reach of the 1900 Act. Mr. Brown is a little doubtful as to the practicability of enforcing compliance with a short amending Act on these lines, but expresses a hope that this might be overcome. We shall doubtless shortly have the report of the Departmental Committee which was appointed some time ago to inquire into the amendments that may be necessary in the Acts relating to joint-stock companies, for the Exchange Telegraph Company states that not more than three or four

sittings will be necessary in order to bring their investigations to a close. It is said that the Committee have circulated a large number of interrogatories among the various Chambers of Commerce throughout the country, and hence Mr. Brown's point will probably not have been overlooked.

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**Should Cheques be Altered?** It is reported that the cheques of the Sheffield and Hallamshire Bank now bear the words "this cheque must not be altered from order to bearer," the idea being presumably to discourage the alteration of "order" cheques to "bearer" cheques by initials or signature. Many banks stipulate that where such alteration is made it shall be verified by the signature and not by the initials of the drawer, but in practice cheques are constantly altered as indicated, and verified only by initials which are very often difficult to substantiate. Instances have, of course, occurred where the initials have been forged, and the bank paying the cheque has been made to suffer. The most interesting point is as to whether a banker would be justified in refusing payment of a cheque which had been altered from "order" to "bearer," provided the alteration had been duly verified. On the answer to this question depends the usage which is sought to be established as between banker and customer. It would be interesting to hear our readers' opinions on the point.

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**American Insurance Companies.** Particulars have appeared in the New York press of the report of the Joint Legislative Committee appointed by the State of New York to investigate the affairs of life insurance companies. The report, which was accompanied by eight Bills designed to carry into effect the recommendations of the Committee, is of too lengthy a nature to be reproduced in full. The main points of the Bill amending the general insurance law are as follows:—Officers and directors of companies shall not be interested in any sale or loan in which the company is interested, except in relation to policies they themselves hold. All violations of insurance law are made punishable as misdemeanours. Every life policy must contain the entire contract between the insured and the company, and statements of the insured are to be deemed "representations," and not "warranties." Provision is made for ascertaining the surplus of revenue, limiting the amount of contingent reserve, and compelling the distribution of all surpluses annually,

either in cash or extended insurance, at the option of the policy-holders. As regards the election of directors, lists of all policy-holders of one year's standing, to the amount of \$1,000, are to be filed five months before election. It is rather surprising to note that new business is limited on a percentage basis, the general maximum prescribed being \$150,000,000 a year. The expenses of the companies are limited, and all salaries above \$5,000 must be fixed by the board of directors. In addition to this, any policy-holder may cause an examination of the company's affairs if the Superintendent of Insurance believes the facts to be sufficient to warrant it. It will be seen that the suggested legislation is fairly drastic, but from all accounts the companies have only themselves to blame. Another Bill recommends that no investment in the stock of any corporation shall be permitted except in public stocks of municipalities. That no loans should be made upon stocks and bonds which are not the subject of purchase under this provision, and that every company now owning stocks or bonds of the prohibited classes shall be required to dispose of them within five years from the 31st December 1906. Perhaps the most drastic recommendation is that which deals with the prevention of contributions by the officers of insurance companies to political funds. The report states that enormous sums have been expended for such purposes, and that "the conduct of the officers has created a 'widespread conviction that large portions of the 'policy-holders' money have been dishonestly used.'" If this severe cleansing of the stables does not entirely remove all causes of complaint, it seems impossible to suggest any other remedies.

**The London Court of Arbitration.** A dinner was held on Monday last to celebrate the reconstitution of the London Court of Arbitration under the joint auspices of the Corporation of London and the London Chamber of Commerce. It appears to be hoped that the amalgamation of the two undertakings will have the effect of galvanising them into life, and of substituting arbitration for litigation as a means of settling commercial disputes. As we have already pointed out in these columns more than once, however, arbitration is very largely resorted to already in all suitable cases, but a business of this description is not very likely to be absorbed by a tribunal which, while possessing all the disadvantages of publicity and of formality, which tend to embitter the dispute, does not provide

those elements of a final settlement which a judicial decision alone can give. In expressing this view we are in no sense belittling the principle of arbitration, which is well known and very generally appreciated. What we point out is that a *quasi*-public tribunal which possesses all the disadvantages of both arbitration and litigation, with hardly any of the merits of either, is hardly likely to receive more support in the future than in the past.

**The Law  
Guarantee and  
Trust Society,  
Lim.**

The eighteenth annual general meeting of the Law Guarantee and Trust Society, Lim., was held last month, when the accounts for the year ended 31st December last were submitted, and approved. These showed a credit balance of £35,743 on Revenue Account, of which £5,000 was transferred to General Reserve Fund, and £8,000 to the Reserve for Claims in Suspense. A dividend which (including the interim dividend paid in June) is equivalent to 10 per cent. for the year, free of income tax, was paid, and £25,135 carried forward. Many accountants question the desirability of provision for unexpired risks being included in the General Reserve Fund. The fact, moreover, that the investments, appearing at £215,200, are taken at or below cost gives little or no indication of the true value of the item at present. But we may add that it is, of course, practically impossible for the annual Balance Sheet of an undertaking carrying on a business of this description to distinctly state its financial position, and, therefore, latitude must be given.

**The Subject Matter  
of Accountants'  
Certificates.**

The Council of the Institute has upon more than one occasion expressed the view that it is improper for accountants to give certificates foretelling future profits upon the basis of past profits, or certificates to be used for advertising purposes by outside stock-brokers. Our attention has been called to an advertisement recently issued by a financial contemporary, which takes the form of a *facsimile* of a letter from its auditors, a firm of Chartered Accountants, in which they certify as to the character of its subscribers and as to the aggregate and average value of investments which upwards of one-third of the subscribers are said to have placed on our contemporary's investment register for the purpose of receiving advice thereon. We make no

reflection whatever upon the standing of the paper in question, or of the firm employed as its auditors, but we may say that it seems to us that matters of this kind are not suitable subject-matter for an accountant's certificate, and that certificates so issued are open to the objection of being regarded as advertisements of the accountants concerned as well as of their clients.

**The West of Scotland Insurance Office, Lim.** The nineteenth annual meeting of the shareholders of the West of Scotland Insurance Company, Lim., was held at Glasgow last month, when the accounts to 31st December 1905 were submitted and approved, and a dividend of 10 per cent. per annum free of income-tax declared, after adding £4,000 to the Reserve Fund, thereby increasing it to £30,000. Appended to the accounts is a summary of the working for the past nineteen years, showing a total income from all sources of £294,235, of which 46.9 per cent. was absorbed in losses, 30.7 per cent. in expenses (including commission and preliminary expenses), leaving 22.4 per cent. as profit. Of this approximately 10 per cent. has been distributed, 10 per cent. transferred to Reserve Fund, and the remaining 2.4 per cent. carried forward.

**Purchases Omitted from Stock.** In the recently issued accounts of Jeremiah Rotherham & Co., Lim., we observe a note appended to the Balance Sheet to the effect that goods for the spring trade, and in course of delivery, are not included in the trade liabilities, nor in the stock. This, it seems to us, is an excellent way of drawing attention to the fact that the Balance Sheets of many undertakings carrying on a similar business are not literally correct; that is to say, parcels of goods for the new season's trade which have actually been delivered on the business premises are omitted from the stock-in-trade and from the trade liabilities. The practice is convenient as showing more clearly the amount of the old season's stock unsold, and as enabling the stock-taking to be completed more expeditiously. It is, however, of course, theoretically inaccurate, in that both the assets and the liabilities are understated, and unless considerable care is exercised there is the possible risk of a parcel of goods being included in the stock when the corresponding invoice is not included among the liabilities. So long, however, as reasonable care is exercised, and so long as such a foot-note is appended to the Balance Sheet, the practice seems to be entirely unobjectionable.

**After-acquired Property of a Bankrupt.**

We are inclined to think that our correspondent "L. H. L. S.," whose letter we reproduced last week, does not fully appreciate the principles of the law relating to the after-acquired property of an undischarged bankrupt. We would accordingly recommend him to carefully study the subject in one of the leading text-books, or our past volumes. Stated quite shortly, the after-acquired property of an undischarged bankrupt is his own, for him to deal with in any way that he may think fit until the trustee intervenes. Upon his intervention, the bankrupt may surrender his claim or the Court will adjudicate thereon, but all transactions entered into by the bankrupt prior to such intervention will be respected by the Court. We gather from our correspondent's statement of the facts that in the case under consideration the bankrupt has assigned his interest in the subject-matter of the dispute prior to the intervention of the trustee. If that be so, we think that it may, for all practical purposes, be taken that the assignment is good.

**Accountancy in Australia.**

It may be of interest to our readers to learn that the Heralds' College has issued a coat of arms for the accountants in Australia, which has been duly forwarded through the Colonial Office to the representatives of the different States. As we had foreseen, the application of the Victorian accountants for a Royal Charter of incorporation has not been granted, doubtless because there is no very apparent reason for selecting Victoria for special treatment. If the Societies in the various States can agree upon a reasonable scheme of federation, no doubt a charter of incorporation will be granted, and it might then serve some useful purpose.

**Auditors' Certificates.**

It is reported that at the recent half-yearly meeting of the North Wales Quarries, held on the premises of the Co-operative Wholesale Society, Manchester, the auditor's statement was read to the effect that had the stocks been valued according to the price list which prevailed during the December half-year, instead of by the list which came into operation on the 1st January last, the Trading Account would have shown a profit of £298, instead of £30 as recorded by the directors in their report. This may be interesting reading, but surely anyone save the auditor of a co-operative society would know that such statements are outside

the scope of an auditor's report, and can only have a mischievous effect. If the accounts, with the stocks properly valued, showed a trading profit of £30 only, nothing but misunderstanding can result from the statement that had they been valued differently a profit of nearly ten times as much might have been shown. It is, doubtless, admitted that the £30 is the correct figure, and that being so no useful purpose can possibly be served by suggesting any alternative figure in its place.

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**Company Practice.** With further reference to the inquiry from "T. E. A.," whose letter under the above heading appeared in our Correspondence columns last week, executors are entitled, without transfer, and (generally) without payment of any fee, to have the grant of probate registered, which will enable them to subsequently secure registration of a transfer executed by them as transferors of the shares formerly standing in the name of the deceased. But if they wish to have those shares transferred absolutely into their name as beneficiaries, a transfer must be registered in the usual way, executed by the executors in their representative capacity as transferors, and by them in the capacity of beneficiaries as transferees.

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### Our Portrait Gallery.

*(To the Editor of The Accountant.)*

SIR,—I shall be obliged if you will allow me, through the medium of your valuable paper, to make a request on behalf of several accountants and accountant students.

Your numerous readers must have viewed with satisfaction the reproduced photographs of those leaders of accountancy which have appeared in *The Accountant*

during the past two years, and it is in the same spirit of appreciation that I wish to request you to give us the pleasure of adding to the present collection the photograph of Mr. G. van de Linde, F.C.A.

I am sure that Mr. van de Linde's ardent support of the interests of the profession should give to every reader of *The Accountant* a desire to include his photograph amongst those which have already appeared.

If there is any further inducement needed to support my request, I would desire to draw attention to Mr. G. van de Linde's great work for the "Chartered Accountants' Benevolent Association," his position as auditor to "The Institute of Chartered Accountants," and the ready aid and genial patronage which he affords to articled clerks, and students' societies.

I trust that my request will meet with your hearty approval.

Yours faithfully,

COMMUNE BONUM.

### Licenses and Compensation.

*(To the Editor of The Accountant.)*

SIR,—As a weekly reader of *The Accountant* I shall be obliged if you will enlighten me on the following points:—

Can a lessee of a licensed public-house who holds an unexpired term of twenty years on the property deduct the proportion of the Compensation Fund Charge (Licensing Act, 1904) from the *ground rent*—no rent being paid? Also, in the event of a lessee paying *rent and ground rent* on a similar property, can he deduct the proportion of the Compensation Fund Charge from both rents?

I am, yours faithfully,

Pontypridd, 12th March 1906.

E. W. GALL.

### Claim against Sureties.—Laches.

*(To the Editor of The Accountant.)*

SIR,—I should be greatly obliged if you, or any of your readers, could refer me to reports of a few of the most recent cases in England or the Colonies where sureties for a collector of rates who has embezzled moneys collected by him have contested their liability, seeking to prove *laches* on the part of the municipal or other authority.

I wish particularly to obtain a copy of a report of a case, if there has been such an one, where the

sureties were private persons, some of whom have entered into recognisances to H.M. the King, and some into ordinary bonds to the municipal or other authority.

I am, Sir, yours faithfully,

GIBEL-TARIK.

### Registration for the Profession.

(To the Editor of The Accountant.)

SIR,— Your leaders on "Competition between Accountants" and "Associations of Accountants" have afforded me interesting reading, and I am quite of the same opinion as your correspondent Mr. R. Slater Windle, that it is high time some steps were taken for the registration of the profession.

I am an unattached accountant practising in partnership with a Fellow of the Institute, and since I commenced on my own account, a little over two years ago, I have always endeavoured to maintain a high standard of efficiency, as well as professional conduct; and, having regard to my partnership, I am now practically working as though I were subject to the control of the Institute.

Your previous correspondents upon this subject have been mostly members of the Institute, and perhaps my views as a non-member may be interesting to your readers.

In my opinion registration to be of any real service must not only seek to prevent unregistered persons practising as accountants, but must also grant to registered persons some monopoly; and it is obvious that the scheme must be reasonable and not be a bar to *bona fide* practitioners, not being members of the Institute or Society (we will not here refer to members of the recently-formed bodies), continuing their work, and upon such a basis, and with a united front, there should be no difficulty in obtaining some satisfactory legislative measure.

Like your correspondent Mr. Windle, I have met with cases of "House Agents and Accountants," &c., and there can be little doubt that the object in a great number of these cases is to reap any benefits that may accrue when the day of registration arrives, and it must be admitted they will be a force that will have to be dealt with.

There is also the question of these newly-formed bodies of accountants to be dealt with, and there can be little doubt but that age will strengthen their case,

Taking the general situation into consideration it must be obvious that procrastination is making the solution more difficult, and less favourable to the members of the Institute and Society; and it is for these two bodies to settle their grievances, which, in my opinion, are now more imaginary than real, and promote some scheme of legislation, otherwise some legislative measures may be forced upon them, as the matter is not only one for the protection of a profession, but for the protection of the general public, especially the investing portion of it.

I now respectfully submit my proposals:—

- (1) That the State should recognise accountancy as a profession, and for the public safety protect it by excluding persons not eligible for membership.
  - (2) That a certain monopoly should be created giving to the profession certain work, and making it unlawful for others to execute such work. (In this too much should not be expected.)
    - (a) Auditorships of all companies formed under the Companies Acts, by Royal Charter, &c.
    - (b) Of all co-operative, industrial, friendly, and building societies.
    - (c) Of all banks, insurance companies, &c.
    - (d) That no person other than "Certified Accountants" be allowed to certify in any way any Balance Sheet or Profit and Loss Account, whether of a company or private trading firm.
    - (e) That no person other than a "Certified Accountant" be allowed to hold himself out as an accountant, and practise as such.
- (It would appear undesirable to seek any monopoly in trusteeships and liquidations, as this would, I am afraid, meet with opposition from the legal profession.)

- (3) That the admission of members and control of them be vested in a Committee appointed by the members themselves, and that local "Disciplinary Committees" be formed for the more effective supervision of the conduct of members.
- (4) The system of premiums should, I maintain, be abolished or a limit fixed, and a fee should be payable, say, fifty guineas, for a practice certificate, and a renewal fee of, say, ten guineas per



annum. The former should be payable to the State for the protection given and monopoly created.

My objection to premiums is that they are often the means of excluding capable thinking persons from a profession; and, further, if the State granted any monopoly it is the State that should receive the premium, and not the persons who receive the benefits of such monopoly.

- (5) That admission be by examinations which should call forth more effort of the thinking faculties than of the mere memory. This would more effectively keep down the number, and raise the efficiency of the members than any premium charging.
- (6) There should be some scale of costs, at least for the privileged work, so that charges could be taxed when necessary.
- (7) The examinations to be three in number:—
  - (1) Preliminary, or educational.
  - (2) Intermediate, which should cover mere memory work.
  - (3) Final, which should occupy about a week and be of a very practical character, and call forth the thinking side of the student as well as his capabilities for dealing with intricate items of daily occurrence.

The questions should be problems taken from actual practice, and text-books, which are available in practice, allowed.

- (8) Persons eligible as first members. This is the question that probably presents all the difficulty, and it will be observed that in my proposition I would come in for examination, and I think that no one who views the profession as one of learning and who has not already been subject to the examination test, should have any objection to proving his efficiency and qualification to practise in this way.

It must be remembered that it is rather obnoxious for matured persons to commence the ordinary text-book studying, and it must be granted that the examinations as now set would require this, for I venture to say that quite a large percentage of Chartered Accountants of, say, over thirty years of age could not sit down and answer a recent Final paper with any marked degree of success. For this reason the

qualifying examinations for first membership should be as practical as possible. I suggest that the following persons be eligible:—

- (a) All persons who are members of the Institute or Society by examination.
- (b) All members of these bodies who have been in practice for five years previous to registration.
- (c) Members of the Scottish and Irish Institutes who have qualified by examination and been in practice in this country for twelve months.
- (d) All public accountants who have been in *bonâ fide* practice for ten years previous to registration.
- (e) All public accountants of five years' *bonâ fide* practice and pass a qualifying examination.
- (f) All public accountants of two years' *bonâ fide* practice who pass a qualifying examination similar to the Final referred to in Clause 7.
- (g) All public accountants of six months' *bonâ fide* practice who pass the Intermediate and Final Examinations within a period of, say, eighteen months.

There are a number of members of the Society, and perhaps some of the Institute, who have not been admitted by examination, and have never been in practice, but are attached to municipal and similar bodies, companies, &c., and these persons could not reasonably expect registration without submission to some examination.

- (9) All applicants to prove themselves, to the satisfaction of the Committee, proper persons to admit to membership.
- (10) *Bonâ fide* practice to be clearly defined so as to exclude persons who are really carrying on business as house agents, debt collectors, &c., and all such cases should be the subject of special inquiry, and the applicants compelled to produce, if required, their books for a period of, say, three years, and any further evidence necessary.

It would appear difficult to leave this subject without referring to the position of accountants' clerks, and I think it must be admitted that there are quite a number

of capable men who deserve admission, and I have no doubt that an arrangement whereby they might have to pass examinations according to length of service, and prove their eligibility by testimonials from their employers, would meet with approval from all concerned. I trust my suggestions may call forth an abundance of criticism with suggested improvements and further ideas, and that the matter be not allowed to drop until the Councils of the Institute and Society arrive at some scheme upon which to take the opinion of their members; and I venture to predict that if the younger members take a reasonable view of the matter, and look ahead rather than at the past or present, there would be an overwhelming majority in favour of registration. And if the scheme was at all reasonable it would have the support of all unattached accountants who desire to see the profession raised to a proper level—the others could be safely ignored—and with such support the desired end would be obtained.

With an apology for such an encroachment upon your valuable space,

Yours truly,

UNATTACHED.

#### Rights and Liabilities of Receivers.

(To the Editor of *The Accountant*.)

SIR,—In *Accountant Law Reports*, 22nd February 1902, p. 41, there is a mistake, due possibly to a printer's error. The judgment reads, "Mr. Justice Swinfen-Eady held that the receiver was not in "occupation or the incoming tenant of any of the "premises, and granted the injunction asked for." As an injunction would only be granted if the receiver were either in occupation or an incoming tenant, there would appear to be some mistake somewhere. I am interested in the point, and should be much obliged if you will kindly look it up and put it right.

Yours truly,

12th March 1906.

DANIEL PATRICK.

#### What are Partnership Profits?

(To the Editor of *The Accountant*.)

SIR,—I shall be glad to have the views of some of your readers upon the following matter:—

A partnership has been formed to run a certain business under the following terms:—Profits to be divisible in two-thirds and one-third shares; a manager has been appointed who receives £1,000 per annum

until such time as the profits shall exceed the sum of £5,000, in which case he is to have 25 per cent. of such surplus.

Losses are to be divided in the same manner as profits, the manager in no case to have to refund more than his 25 per cent., which may have been drawn.

A private Bill in Parliament affecting this partnership business had to be opposed, the costs of which amounted to between £4,000 and £5,000.

Should this amount be capitalised, written off over a period of (say) four years, or charged as a loss in one year?

How does the manager come in, supposing the profits to be £6,000? Is he entitled to 25 per cent. of the £1,000 before anything is written off for Parliamentary expenses, which were incurred before the profits reached the sum of £5,000?

Hoping you will find space in *The Accountant* for this rather lengthy letter,

Yours faithfully,

M. B. C.

#### Income Tax.

(To the Editor of *The Accountant*.)

SIR,—I should be pleased to be allowed to express again my adhesion to the views of Mr. Herbert Edwards, as appearing in your last issue, on the difficult question of assessment in case of a succession to a business, under the circumstances narrated; it is gratifying also to find that the solution given recommends itself to you as editor.

It should be remembered that law, as well as practice in accordance with the principles of accountancy, enter into the question of "the measure" of liability for each current year; and that in the correct interpretation of the Income Tax Acts many such inferences must be brought into play in order to arrive at a proper conclusion on special cases. Thus, there is no direct authority in the wording of the principal Act for allowance of Schedule A assessments where the business proprietor happens to be owner as well as occupier of the business premises; nor is there in respect of the disallowance of the deduction of income-tax itself as a trading charge; neither is there in regard to the adjustment required under Schedule D profits in relation to the Schedule E assessments made on directors' fees and salaries during the three years succeeding the formation

of a joint-stock company out of a private firm. In these instances the Inland Revenue authorities have adopted a procedure which, while compatible with the spirit of the Acts themselves, is also in accord with the principles of accountancy.

I regret to notice the animus that somehow seems to actuate your correspondent "Law and Practice" in regard to the administration of the Acts by Surveyors and the Inland Revenue authorities generally; my own opinion is that this frame of mind, wherever it unhappily exists, would be in a great measure mollified by a deeper dose of the spirit in which the Acts and their administration is discussed and criticised in Messrs. Murray & Carter's "Guide."

Yours truly,

12th March 1906.

ZERO.

#### Income Tax, Schedule A.

(To the Editor of The Accountant.)

SIR,—If I understand your correspondent, "Kingston," correctly, I gather that the licensed property belonging to "A" is leased to "B" at £520 per annum, with a trade tie. It therefore follows that the true annual value of the premises is the amount of rent paid *plus* the value of the tie. In other words, what amount would a tenant *not* tied pay for the house? If the Commissioners consider that £550 is the full rack rent of the premises, the assessment would be on this amount and not on the £520. It would obviously be unfair to the Revenue if the premises were assessed at £520, as, after all, this is only a nominal rental.

Plainly stated the above is the position, but if your correspondent is desirous of fuller information on this complicated subject I refer him to "Ryde on Rating," 2nd Edition, 1904, pp. 450 to 471.

Yours faithfully,

Leeds, 13th March 1906. J. W. STEAD, F.C.I.S.

#### Auditors and Prospectuses.

(To the Editor of The Accountant.)

SIR,—It is not an unusual thing in the conduct of their practice for a firm of accountants to be requested to permit their firm to be named on the front page of a company's prospectus as auditors. In most cases, where the company is formed with the object of acquiring an already established business, it is possible for the accountants, before consenting, to arrange that they shall have such opportunities as they require of

satisfying themselves that all figures given in the prospectus are correct, even if they are not called upon to certify their accuracy.

We should be pleased to hear your views, and the views of your readers, in regard to their responsibilities for figures in the prospectus of a new company formed for the purpose of manufacturing a patent article, where the figures are purely estimates. Our own practice is to satisfy ourselves, firstly, that the directors named in the prospectus are men of character and reputation; and, secondly, by interviewing those primarily responsible for the estimates to satisfy ourselves that the estimates are comprehensive. Further, we require it to be stated that "the foregoing estimates have been compiled by or adopted by the directors."

We shall be pleased to hear the opinion of others as to whether, by taking this course, the auditors named in the prospectus effectually remove from themselves responsibility for figures on which they can have no direct knowledge.

Yours faithfully,

14th March 1906.

INTERESTED.

#### Reviews.

##### Bookkeeping for Retail Grocers and other Tradesmen.

By M. WEBSTER JENKINSON, A.C.A.

London, 1905: Gee & Co., 34 Moorgate Street, E.C.

Price 1s. net.

This little handbook is virtually a reprint of a lecture delivered by the author some little time since, which has already been dealt with in these columns, and therefore does not again call for detailed criticism. It contains many useful hints, but also presents some curious contrasts of up-to-date and obsolete devices, such, for instance, as the Small Accounts Keeper—a most valuable arrangement under suitable safeguards, representing one of the numerous developments of the Slip System—and the old-fashioned Guard Book, into which invoices are to be pasted, after having first been carefully folded up so that no one can see what they contain without first deliberately unfolding them. To those, however, who are possessed of a little necessary discrimination, the volume will be found both useful and suggestive.

**The Complete System of Bookkeeping for Brewers, Maltsters, Wine and Spirit Merchants, Mineral Water Manufacturers, and other Businesses.**

By EDWARD AMSDON, A.C.A.

London, 1906: Spottiswoode & Co., 54 Gracechurch Street, E.C. Price 5s. net.

While entirely dissenting from the suggestion that the system of accounting described in this work can be fairly styled complete, it must be admitted that the volume now before us contains much that is of considerable practical value, and which can accordingly hardly fail to be appreciated by those connected with the various industries enumerated. The letterpress, which is somewhat highly condensed, is well arranged and clearly written, and aided by numerous *pro forma* rulings, most of which are ingenious, but all of which would be far more valuable if fully worked out instead of being merely given in the form of skeletons.

**The Institute of Bankers' Annual Year Book.**

London, 1906: Blades, East & Blades, 23 Abchurch Lane, E.C.

The Year Book of the Institute of Bankers consists chiefly of the list of members, comprising 411 Fellows, 1,350 Associates, and 3,839 Ordinary Members, corrected to the 1st January 1906, to which are added the list of present officers, the constitution of the Institute, and the names of the banks which contribute to the membership. We cannot help thinking that a short statement of the objects of the Institute, and of the detailed qualifications for membership, would have materially added to the practical value of the volume.

**Gas Companies' Bookkeeping.**

By J. H. BREARLEY AND BENJAMIN TAYLOR.

London, 1906: Walter King, 11 Bolt Court, E.C.  
Second Edition. Price 12s. 6d.

The first edition of this useful work was reviewed at the time in our 26th Volume. In the present edition certain modifications have been made, chiefly with a view to remedying the shortcomings to which we then drew attention, with the result that the practical value of the volume has been materially enhanced. From the point of

view of our readers, however, it will probably be regarded of interest rather as a good explanation of a representative system of accounts in actual use, than as the last word to be said on the subject from the point of view of the requirements of professional men. The supplement of useful forms presents an unusual and excellent feature, in that the exact size of the originals is in most cases indicated in the form of a foot-note.

**Nottingham Chartered Accountants Students' Society.**

**How to Criticise Accounts.**

By W. R. HAMILTON, F.C.A.

A PAPER read before the members of the above Society on March 9th 1906.

(1) The subject which I wish to speak to you about this evening might perhaps be more correctly described by the title "How to Interpret Accounts." A set of books, or a Balance Sheet and Profit and Loss Account, constitutes a record of transactions, and there is sometimes a danger that we accountants should concentrate our attention on the record, and forget the transactions which lie behind it. It is these transactions and the business, or the man behind the transactions, to which I wish to draw your attention. I wish to impress upon you, if I can, that from books and accounts something more than technical information is to be gained; that, in fact, it is possible to form an idea of a business not only from the net profit earned (which is too often the only point looked at), but also from the whole course of business as shown by the accounts.

(2) The simplest and most frequent entry in books is the record in the Day Book of a sale. From one point of view this is a mere item to be debited to the customer, and to be credited to the Sales Account, or some other Impersonal Account. Before, however, the entry came to be made in the books, something and some person was at work to make the sale. The seller obtained in some way the article which he offered for sale, he further obtained a customer, and he thought it worth his while to sell the article to that customer at a certain price. And behind every entry in all books there is the same animating spirit prompting the transaction which gave rise to the entry.

(3) Now the number and nature of these entries, the very manner in which they are made in the books, and the totals in which they ultimately result, tell their story to those who can read it, and to be able to read it is a

very valuable help to an accountant, be he principal or clerk. The more we know about a business the better we can fulfil our duties as auditors, and the more we know about business in general the better are we fitted to offer opinions likely to be helpful to our clients. This is very important, for all accountants must have noticed that within the last ten or twenty years there has been an increasing tendency on the part of the public to come to accountants for general advice.

(4) My point may be illustrated in this way: Suppose I keep a record during a whole year of the doings of some person who is well known to me. At the end of the year I have accumulated a good deal of information, and I might tabulate this very neatly, so as to show the average hour at which this person rose in the morning, went to bed at night, had his meals, and all such like information. All this might be perfectly correct, but its real value arises only by its constituting an index to the character of the person to whom it applied. It is one thing, in short, to collect information, and it is another thing—much more difficult and much more interesting—to draw inferences from it which are likely to be correct.

(5) Neither the scope of this paper nor the time at my disposal permits me to deal with any points except those connected with completed accounts—Balance Sheets and Profit and Loss Accounts. Before, however, an audit or investigation has gone so far as to result in accounts, there are many opportunities of criticism and of drawing inferences. Indeed, there is much information, which is at least of potential value, which can only be got from that detailed examination of books which generally falls to the lot of the clerk rather than of the principal. Take the Day Book, for instance, here are a few points to be noted in the course of checking it:—

- (a) Is the general look of the book such as to lead you to suppose that it is an original book of entry?
- (b) Are the sales fairly regular as between one month and another?
- (c) Are there any very large customers?
- (d) Are consignments treated as sales?
- (e) Are there any sales which look as though they were rather outside the ordinary course of trade—*e.g.*, sales by a manufacturer of raw material?

(6) These are only a few points, and concern one book only. The subject of inferences to be drawn from a detailed examination of books is one which might very well form the subject of a separate lecture, or of a discussion. Bear in mind, in relation to the detailed work of checking books, that the difference between a second-rate clerk and a first-rate one is very largely that the second-rate one can be depended on to do his work with

technical accuracy, but to do no more than this; while the first-class clerk is able not only to do this, but to get behind the mere records and to be able to form some idea of what they really stand for.

(7) You may perhaps think that it is for the present enough for you as students to understand the technical side of the accounts, without troubling about any inner meaning they may happen to have. In a sense this is true; your business is primarily to be thoroughly acquainted with accounts on the technical side, so that you can handle them and be perfectly familiar with them. I suppose that any clerk with ability and application who has been articled in a good office, and has had good opportunities after his articles, can in, say, ten years be virtually master of the technical side of his business—can be so familiar with all kinds of books, and with the numberless errors which people make in designing and keeping them, as to have his profession at his finger-ends. To attain this proficiency is very naturally your first object. But it is very needful to guard against the impression that when you have done this you have no more to learn, and it is, I think, helpful to you to have put before you some idea of the possibilities in handling accounts. An appreciation of these possibilities will make your work more interesting.

(8) Before going further, let me explain that any books or accounts referred to by me here I assume to be honest. The question of fraud is a large one, which requires to be separately dealt with, and I assume therefore honest books and accounts, and desire to talk only of the inferences which may be gathered from them. Furthermore, I have nothing to say about the *form* of accounts. That also is a matter to be dealt with separately; I assume that we take the books and accounts as we find them. Nor do I deal with Cost Books and Accounts, but confine myself to the commercial side of a business.

(9) I may say, too, that I draw no distinction between businesses carried on by limited companies and those carried on by private individuals. The distinction is one which affects the division of the profit rather than the essential nature of the concern.

(10) I assume that you have grasped the fact that all knowledge bearing on a business with which you are connected is valuable. Of course, it is not all equally valuable, nor may it have any value at the moment, but sooner or later it is sure to be useful. It is for this reason that I am not concerned with the point of view from which you happen to criticise any accounts which come under your notice. Of course, if you are acting avowedly for a buyer you do not lay stress on those points which you would especially deal with if you were acting for a seller; and you would look at the business from still another

point of view if you were giving advice to the owners of it in the ordinary course of your professional connection with it. But before you can select from your information that portion of it which is likely to suit the special circumstances in which you find yourselves, you must possess the information, as well, of course, as the ability to handle it, and if you have a set of accounts before you it is your first business to know as much as possible about them and the business behind them, irrespective of how this information is to be used.

(11) We must, to make any useful criticism, have some knowledge of business life in general, because we cannot say whether any result shown by the accounts is good or bad, save by comparison with other concerns. And if we have in addition a knowledge of the particular trade to which the accounts before us deal, so much the better.

(12) In dealing with the final accounts of a business, and the interpretation to be put upon them, you must bear in mind that any inferences you may draw from them are but inferences, and require verification before they can be acted upon. All businesses of the same description are subject to the same general laws, but no one is exactly like another, any more than one individual is the same as another. So that in dealing with a feature which is *prima facie* unsatisfactory, you must be prepared for the possibility of its being satisfactorily explained, and *vice versa*. Also there are some things which accounts do not necessarily show at all. A fire, a serious illness of the proprietor, improved railway communication to the neighbourhood, the establishment of competitive concerns, are instances of occurrences which, while they affect the accounts, do not necessarily show specifically in a Balance Sheet and Profit and Loss Account.

(13) Let us suppose, first of all, that we have before us a Balance Sheet, and nothing else. Suppose, if you like, that it has been sent you from a friend at a distance, who tells you that it is the Balance Sheet of a firm in a particular line of business, and asks you what you think of it. The truth is that you cannot on such meagre information give any opinion which is worth having, except perhaps so far as regards the sufficiency of the fixed capital in the business. The whole art of criticism is based on comparison, and when you have nothing to compare you have nothing to criticise. A comparison of the fixed capital with the fixed assets is almost the only one which can be made on the information divulged by a Balance Sheet alone. The points to look at in connection with this comparison are very simple. A business demands a certain amount of capital, and the amount required at the moment of the Balance Sheet is, of course, the total of the assets—Book Debts, Stock, Plant, and the like, say £10,000. On the other side, by virtue of its being a going concern, it

can command in the ordinary course of trade a certain amount of this capital in the shape of credit given to it by the firms who supply it with goods. This is an amount which can be reckoned on with some certainty, because we are pre-supposing that the business is a going concern. Call this £1,000. The difference between this capital (*i.e.*, the amount of the trade creditors) and the total of the assets (in this case £9,000) must, if the business is to be considered sound, be provided in such a way as to make it reasonably probable that it will not be withdrawn at a moment's notice. The entirely safe way is for the capital to belong to the owner of the business, but this is seldom the case, and Balance Sheets usually contain on the debit side such items as "Amount on Mortgage" (or, in the case of companies, "Amounts due on Debentures"), "Loan from Bank," "Amounts due to Cash Creditors," and the like. All these are, in certain circumstances, sources of danger, and therefore of weakness to the concern, a mortgage on freehold property being the least dangerous form of liability. You are not to suppose that a business is necessarily in a dangerous condition because the proprietor's capital is not equal to the assets, but you will note that the more loans there are the more likely is the business to be involved in some sort of financial difficulty or inconvenience. But remember that personality counts for much, and that a shrewd, honest, capable man, faced with the alternatives of carrying on his business with insufficient capital, or of going through the Bankruptcy Court will manage to get along under circumstances which we accountants, sitting quietly in our offices and considering the matter, would pronounce to be impossible.

(14) Let us assume now that we have not only a Balance Sheet before us, but that this is accompanied by a fairly detailed Profit and Loss Account, covering the year prior to the date of the Balance Sheet. The introduction of the Profit and Loss Account immensely increases our field of view, and, though the information is still meagre, we are in a position to make some useful criticisms. The field of view is still further increased when, instead of one Balance Sheet and Profit and Loss Account, we have a series. That I propose to deal with later; for the moment assume that we have but one. And remember (what cannot be too much insisted upon) that at the best you will get no more than hints—suggestions of a tendency—to be verified by fuller investigation as occasion offers.

(15) The Profit and Loss Account gives us the key to the business—the amount of the sales in the year—and we must assume that these sales are so set forth as to tell what amount of them represents sales on credit and what amount represents cash sales. In the case of a manufacturing business, or a wholesale one, the absence of this sub-division would not be important, because in such businesses the cash sales are necessarily very small. Besides,

the kind of criticism we are now embarking on is not concerned with small points—what we are looking for is broad results. Too much stress must not be laid upon any one item; it is the general tendency which we want to find out.

(16) Credit sales, in the nature of things, involve the giving of credit, and therefore where there are such sales there must be debtors. I assume that from your general knowledge of business, and your knowledge of the particular trade you are dealing with, you are able to form an idea of how much credit ought to be given. Suppose you are dealing with a trade in which it is customary to give a month's credit, all goods sold, say, during November, being paid for on the 1st of January. In such a case the debtors shown in a Balance Sheet struck as on 31st December should amount roughly to the total sales made in November and December, or to about one-sixth of the yearly turnover. Thus, if the circumstances are as above, and the annual turnover £60,000, the debtors ought to stand at about £10,000. Of course, this is rather rough, and there may be special circumstances affecting particular businesses. The point which I wish to impress upon you is that there is a relation between the turnover and the debtors, and it is for you to say from the knowledge of the circumstances whether the relation actually existing as shown in the accounts is a satisfactory one. Bear in mind that an apparently unsatisfactory relation may be at once accounted for by reference to the books, or to the proprietor of the business. It is equally true that a relation, satisfactory on the whole, may conceal some very unsatisfactory feature. Thus the credit current in a trade may be for home accounts, say, four months, and in that case the amount of the book debts should be about one-third of the amount of the annual sales. But if, in fact, a large proportion of the trade is done, say, with shipping houses, on specially short terms, then, if the debtors taken in the lump are one-third of the turnover in amount, some of the home business must be done on abnormally long credit terms.

(17) You have doubtless noticed that there are different lengths of credit in different trades. Speaking generally, retail trade—that is, trade done directly with the consumer—necessitates rather a lengthy credit. Trade done with people who depend on the agricultural interest demands an even longer credit, there being a tendency to pay only once a year—after the harvest. The long credit given to private customers tends, I think, to throw itself back upon the various intermediaries between the manufacturer and the actual consumer, and the wholesale house has often to give long credit to the retailer, on the ground that he (the retailer) has himself to lie out of his money.

(18) Another relation which is not at all fortuitous is that of the stock to the total sales. In distributive busi-

nesses, as opposed to manufacturing ones, this ratio is fairly constant. For instance, a retail draper doing a general trade is known by experience to require to keep a stock equal roughly to about one-fourth of his annual turnover. That, however, is on the assumption that stock is not taken at a time of the year when it is especially high, as in spring and before Christmas.

(19) In the case of a manufacturing business the circumstances are entirely different. Stock in such a concern, however it may be shown in the Stock Sheets, really consists of three quite different classes:—

First, raw material in excess of current manufacturing requirements, as where in view of a possible rise in prices a lace manufacturer has made an unusually large purchase of cotton, or an engineer of copper. Nothing can be predicated about the amount of this stock; it may be very large, or non-existent.

Second, raw material for current use and partly-made articles throughout the shop. In a lace factory cotton on the machines and pieces partly made, or in the mending room, come under this heading. In an engineering shop the current store of bars, plates, bolts and nuts, and the like, and the various parts of the finished product, either wholly made and waiting to be assembled, or themselves in process of manufacture.

Third, finished products waiting for a market. This is an item which may be large, or may be almost or wholly non-existent. An engineer, for instance, may, according to his class of trade, either have a large finished stock, or, if he works solely for orders and contracts, none at all.

The point at which a line is drawn between the first and the second class—between raw material bought as a speculation and raw material, &c., in current use—is purely arbitrary. Nevertheless the difference exists, and until you know how a manufacturer's stock is made up you cannot say very much about its amount, either in contrasting it with the turnover or in contrasting one stocktaking with another. Another important point to look at before you can form an opinion is as to whether the stock shown in the Balance Sheet includes Work-in-progress and Loose Plant. While it is rather misleading to include these items in the stock, it is not by any means wrong, but before you can contrast the ratio in one business with that which obtains in other businesses with which you may be acquainted, you must be quite sure that the item "Stock" means the same thing in both cases. From the point of view of clearness, work-in-progress should not be included in the stock, but should either be shown separately or added to the debtors. Loose plant should also be shown separately. Some relation between the turnover and the

stock there must be, and the point for you to consider is whether or not, so far as your experience goes, the amount of the stock is the lowest one consistent with efficiency.

(20) Just as there is a relation between the credit sales and the trade debtors, so is there a relation between the credit purchases and trade creditors. You know, or ought to know, the credit usually given in the trade. If we assume that the effectual credit given is three months, then the creditors ought to represent about one-fourth of the annual purchases. If they represent less than the ratio which you consider normal, that, as a rule, is all to the good, implying that the owner of the business is able to pay his accounts promptly and take all the discounts he can get. If, on the other hand, they represent more, presumably there is some financial tightness, and, to a small extent, a disadvantage in buying.

(21) There is no item in the Balance Sheet or Profit and Loss Account to which the cash-in-hand should bear any special relation. If the amount is small, there is nothing to be said about it; but if it is large, it certainly calls for notice. A large amount of cash in hand is almost impossible to justify, and its existence points to a defective system, by which cash is kept in hand instead of being paid into the bank, or perhaps to the existence of I O U's, treated as cash but being in reality debts, perhaps not very good ones.

(22) I am sure that there must be some relation (which it would be useful to know) between the value of the machinery and the wages paid. This would, of course, vary in different trades, for some of them make a much more extensive use of machinery than others, but as between one business and another in the same trade I feel certain that a useful comparison could be instituted. I commend the matter to your attention, but I can go no further, because I have no data upon which to pass any views of value.

(23) If there is a bank overdraft shown in the Balance Sheet, the Profit and Loss Account should, of course, contain an item called "Bank Charges," and you should be able to form some idea from the amount of these charges of the average amount of the overdraft. A bank overdraft in the Balance Sheet of £1,000, and an entry in the Profit and Loss Account for bank interest of £300, clearly points to the fact that some time during the year the bank overdraft was very much larger than it was at the close of it. The same question may be raised with reference to the relation between the interest on loans and the amount of the loans as shown by the Balance Sheet.

(24) I think we have now touched on the chief points in the criticism of a Balance Sheet, and Profit and Loss Account which concern the Balance Sheet, though there are still one or two points in the Profit and Loss Account

to be dealt with. I have purposely refrained from giving you any examples in the way of *pro forma* accounts, because we are dealing with principles and tendencies only, and any concrete instance I could give you would be of little assistance in emphasising the points I wish to make. So far as we have gone, however, we may, I think, say this, that if we find a business which is earning a fair profit, where the debtors bear a small relation to the credit sales, and where the creditors bear a still smaller relation to the purchasers, and where also the amount of the stock seems to be low and the capital in the business either belongs to its proprietor or is held in such a way that it is not likely quickly to be called in, then we may say that all this points to the existence of a healthy business. If the circumstances are just the opposite, then the business is not in a healthy state. But, unfortunately, the matter cannot be dismissed quite so simply, for business, like life (and it is indeed a part of life) is full of contradictions, so that you may find a man who is, perhaps, particularly clever in keeping his stock low, who has not the same ability either to sell on short credit or to get his debtors to pay up promptly; and there are many other contradictions such as these to be met with, including, sometimes, the crowning contradiction of a concern which, though all the indications point to an unhealthy state, yet is indubitably a profit-earning affair.

(25) There are some matters on which information is afforded by the Profit and Loss Account without special reference to the Balance Sheet. One of these, and by far the most valuable, is the relation which the amount of the gross profit bears to that of the sales. In distributive businesses the ascertainment of the gross profit is a simple matter, and there is no diversity of opinion as to the items which ought to compose the Trading Account resulting in the balance which is called "Gross Profit." In such businesses the debit side of the account contains the stock at the beginning of the period, and the purchases, with the cost of carriage, while on the credit side appear the sales and the stock at the end of the period. The balance of this account is the gross profit. In retail businesses the rate of this gross profit to the sales is fairly constant, and, I believe, may be taken, speaking very generally, at about 20 per cent. That is to say, sales of the value of £1 should bring in a gross profit of four shillings, or, to put it in another way, the gross profit is 25 per cent. of the material consumed, so that what costs 16s. is sold on the average for £1. In wholesale businesses the rate of gross profit is naturally smaller, for the transactions are larger, and are carried through at a smaller expense per £1 of sales than in the case of a retail business.

(26) When we come to deal with the gross profit in manufacturing concerns we find a different state of affairs. When one retail tradesman tells another that he is making a



gross profit of 22 per cent., and the other replies that the first one must be doing very well, for he (the second) is only making 18 per cent., you may be tolerably certain that these two people have in their minds the same idea as to what constitutes gross profit, but I do not know any two manufacturers who could talk of their rate of gross profit without explanation, and could at the same time be reasonably certain that they meant the same thing by the term. In a general way it is understood that the Trading Account should include only those charges applicable to manufacture, but how many of the charges so applicable should be included is another matter. Some accountants, for instance, advocate the inclusion in the Trading Account of such items as "Repairs to Plant" and "Depreciation of Plant," on the ground, which is perfectly sound, that these are purely manufacturing charges. Now it is to be noted that gross profit is quite a different thing from net profit. Net profit is an indisputable fact, which represents the amount by which, under certain circumstances, the business has improved in the year, and which therefore may be withdrawn from the business. But gross profit is at the best a fiction. It is a very valuable fiction so long as it stands for an idea which can be readily understood, not only by the accountant, but by the client. The absolute rate of gross profit to the sales is, in a manufacturing business, never a matter of much importance, seeing that no two people agree exactly as to what should constitute gross profit. Its importance lies principally in the relation which the gross profit of one year bears to that of another year. For my own part, I adopt the principle that the Trading Account should comprise, not the whole of the items of expense which are applicable to manufacture, but those items only which directly vary with the amount of the output, and which any manufacturer understands as constituting "prime cost." In practice, therefore, a Trading Account so prepared for a manufacturing business contains exactly the same items as one prepared for a distributive business, with the addition of wages. It contains, in fact, the stock at the beginning and end, the purchases of raw material (with the carriage on them), the wages (exclusive of the wages of superintendence), and the sales. The advantage of thus restricting the account is that clients can understand it at a glance, and that as between one year and another the rate of gross profit which should be earned on the sales is not affected by the increase or decrease in the turnover. The falling-off in the output is, or ought to be, balanced by a falling-off in the purchases and the wages, and a Trading Account composed as above shows whether or not this result has been attained. I regard the rate of gross profit to the turnover as of vital importance, so far as the fluctuations between one year and another are concerned. It is by a study of this rate and its fluctuations, more than by any other method with

which I am acquainted, that it is at times possible to put one's finger on a weak spot in a business, and to point this out to the proprietors.

(27) As to the *absolute* rate of gross profit as defined above, it is very difficult to say what this ought to be. But although manufacturing businesses vary extremely, they have a certain essential similarity, and I think you will find that any prosperous manufacturing business with which you are acquainted earns a gross profit of at least 25 per cent. on its sales. It is indeed difficult to see how a business could succeed if it earned less than that, because although a manufacturing business is saved certain expenses, for rent and the like, which a retail business has to bear, yet, on the other hand, the Profit and Loss Account of a manufacturing business (as distinguished from the Trading Account) has to bear certain heavy charges in connection with the manufacturing which do not occur in a retail business.

(28) Individual items in the Profit and Loss Account—such as Trade Expenses, Travelling Expenses, and the like—may very well be looked at; but if you have before you the account for one year only, not very many conclusions are to be drawn from the items in the Profit and Loss Account taken individually. It is perhaps better to combine them, so as to show under one heading those expenses which are matters of fact—such as Salaries, Travelling, Repairs, and the like; then under another heading those which are largely based on opinion—such as Depreciation, and any other Reserves which have been made; and, under a third, Interest, whether interest on partners' capital or on loans or bank overdraft. The fourth item, if there is anything left, is the Net Profit. Still, when you have done this, you cannot with one year's accounts (and I am assuming for the moment that that is all you have before you) get very much of value except, perhaps, that you may find that the expenses bear a certain ratio to the sales, and you may, from your experience of other businesses, be able to say whether this ratio is a proper one. Of course, too, you will have something to say about the rate of depreciation, and you will notice in particular, first, whether the rate is that which is customary; and, second (and for this you will have to return to the Balance Sheet), whether the capital value of the machinery has been increased during the year. With reference to the expenses generally, some particular item may strike you at once as being beyond all question larger (or smaller) than it should be, but in an ordinarily well conducted business, where the accounts are kept with reasonable care, you will not be able to say much from an examination of one year alone.

(29) I have now dealt with the principal points which occur to me in connection with the criticism or interpreta-

tion of a single Balance Sheet and Profit and Loss Account. All the matters with which I have dealt are capable of being tabulated, but it is quite possible to do so, and to be no wiser at the end of it. I have not, in fact, dealt with the matters which require exact tabulation. They require rather to be put together in one's own mind, and from their putting together there should result some impression as to the business with which they deal. But I must warn you against drawing positive conclusions from such slender data as a single year's accounts. The information you can get from them is very valuable to put you on the track of investigation, and to suggest ideas to your mind, but it is hardly enough to solve any question. Particularly is this the case with regard to any figures dependent upon the Balance Sheet. A Balance Sheet shows the state of affairs at a particular moment of time, and the course of a business may so run that a Balance Sheet may be an honestly prepared one, and yet fail to give a true account of the average state of the business. The Profit and Loss Account is a safer guide, because it covers a lengthy period, and thus errors tend to correct themselves.

(30) Let us assume that instead of having only one Balance Sheet and Profit and Loss Account we have a series, covering a number of years, say four or five. At once we find ourselves on firmer ground. I referred above to the ratio of debtors to turnover. With one year's accounts we can only contrast actual ratios with what we believe to be the ratio in similar businesses, but when we have several years' accounts we can contrast the ratio in one year with that in another, and this is extremely valuable. Suppose we find that a few years ago the debtors in a certain business amounted according to the Balance Sheet to 25 per cent. of the sales, yet we find that each year the ratio gradually falls; then we may be tolerably certain either that the business is being much more efficiently managed on the commercial side than it was previously, or that the kind of trade done is changing. Either of these causes, or a combination of them, may bring about this result.

(31) Inferences of a like character are to be drawn from any change in the relation between trade creditors and credit purchases. According as this ratio changes, so may we see a business perhaps gradually freeing itself from heavy liabilities, or perhaps gradually getting behind with its payments and damaging its credit. The relation of stock to turnover, and the changes in this relation, point also to better or worse management, or to change in the kind of trade done.

(32) As regards plant, when we have a series of years before us, we can tell whether or not this has increased in value or diminished—what relation, in fact, the amount

added on for new plant bears to the amount written off for depreciation. We accountants are, of course, bound to look very closely at the question of depreciation, and to urge the making of a provision as large as possible; but in a manufacturing business of any size it seems to me that, taking a series of years, it is as a rule sufficient if the additions to plant do not exceed the amount written off for depreciation. I think that where the plant is of a very varied description, some of it lasting for a long time and other parts of it requiring constant renewals and replacements, it remains, in fact, whatever may be the book value, at substantially the same value from year to year, assuming, of course, that no extensions take place, and that no departments are closed. Therefore, though it might not be fair as between one year and another, yet over a period of five or ten years the chances are that the plant is as efficient at the end of the period as it was at the beginning, taken as a whole; which is another way of saying that over a long period no depreciation need be charged, so long as every repair and renewal is charged to Revenue Account. Of course, if people like to write off more for depreciation than the renewals amount to, it is not for me to object, and, as I have just pointed out and wish to emphasise, to write off no depreciation and to charge all repairs, renewals, and replacements to revenue is not fair as between one year and another. Also there are cases where, beyond all question, there is a real depreciation year by year, however much is spent on repairs.

(33) In dealing with the question of machinery, there is another point which occasionally arises which is worth notice. It may be that during the years covered by the accounts which you have before you there has to your knowledge been going on a change in this particular factory, or in the trade generally, by which machine labour has been taking the place of hand labour. If this is so, it will show in the accounts. Relatively to the sales the purchases of material will increase and the wages will fall, and the rate of gross profit, ascertained as I have previously defined gross profit, will rise. It must rise if the rate of net profit previously earned is to be continued, because the effect on the accounts of an increased use of machinery is to diminish the amount spent on wages, which goes into the Trading Account, and to increase the amount spent on repairs to machinery, depreciation, and interest on capital, all of which go into the Profit and Loss Account. Let me illustrate by an extreme case. Suppose a factory where the labour is all done by hand—no machinery—and where the gross profit amounts to a sum equal to 17½ per cent. of the sales. Out of this gross profit must come all the expenses other than productive wages and cost of materials. Suppose the owner decides to change to machine production. At once he adds to his

expenses (that is, to the charges which gross profit must bear) a sum for Depreciation, Repairs, Fuel, &c., which we will suppose to equal 5 per cent. on the turnover. He is not going to make this change unless he can see, as a probable result, at least a corresponding amount added on to the gross profit; unless, in short, he can save on his wages. It is not often that a manufacturer changes at one step from hand to machine labour, but in a small way the change is always going on in all modern factories. I may mention, by the way, that of the four or five main causes of the "Unemployed" problem this supersession of hand labour by machinery, or of one kind of machine by another and a better one, is probably the greatest.

(34) With the question of the ratio of the gross profit to the turnover I have already dealt in part. If you see a gradual rise in the gross profit it is *prima facie* evidence of better manufacturing, or of an increase in selling price. The most unsatisfactory feature which a business can show is a continued decrease in the rate of gross profit. Such a decrease strikes at the very root of a business, and requires very full explanation.

(35) You will notice that the amount, and therefore the rate, of the gross profit, are affected by the amount of the stock, and it may very well happen that a considerable fluctuation in the rate of gross profit points to a mistake, intentional or otherwise, in the stock. You may perhaps think, as I do, that the less we accountants have to do with the stock the better. Certainly I am no advocate of any action which makes us officially responsible for it. But that is no reason why we should not use our common sense in regard to it, and it is often possible, before one sees the Stock Sheets, to form a general idea as to whether it should have increased or decreased as compared with the last stocktaking.

(36) With several years' accounts to refer to, you may usefully look at the items of expense in the Profit and Loss Accounts, and compare one year with another. Take Travelling Expenses, for instance. If these vary greatly there is a reason for it, and the reason ought to show in the sales. So with the other expenses. There is a reason behind the amount of them all, and behind the relation which the items in one year bear to the corresponding ones in other years; and sometimes these may give you a valuable hint as to the general course of the business.

(37) Taking the expenses as a whole, and contrasting the totals of the various years, you can, if you like, find out what proportion the expenses bear to the sales. But I think that it is more useful to take the absolute amount of expense than the relative amount. If you see that the expenses are, say, £3,000 in one year, £3,500 in the next, and so on in an increasing ratio, while the sales have not fluctuated very much, then you may be reasonably certain

that, however things may be going on the manufacturing side, the commercial side is not well managed. On the other hand, where expenses do not increase, but where the gross profit declines, the commercial side is probably well managed, while the manufacturing side is at fault.

(38) The reason why I think that not very much can be made of the relation between expenses and sales is that I do not think that expenses go up or down in quite the same way as the sales do. It is commonly held, and maintained in an off-hand way, that the larger the business the smaller ought its standing expenses to be. I am inclined to doubt this; but of one thing I am certain, and that is that sales tend to rise or fall much more gradually than expenses do. I think you would find if you took an increasing business, and plotted out on a chart the sales and the expenses, that the line showing the sales had a *general* upward tendency, while the line showing the expenses would at some times be horizontal, and at others would go up at a great angle; but if you had twenty years' experience of the business before you, you would probably find that the ratio of expenses to sales at the end was very much what it was at the beginning.

(39) There is one other point which I may touch upon in dealing with a series of Profit and Loss Accounts, and that is the advisability, if possible, of obtaining some details of the annual sales, such as is afforded by a splitting up into departments. An increase in the total sales is, of course, satisfactory, but such an increase may mean an increase in one department and a falling off in another, or an increase, say, in credit sales and a falling off in cash sales, and it is desirable to know this. Indeed, one of the points to guard against in the course of any criticism of accounts is this same possibility that two tendencies may balance one another, with the result that neither of them shows itself. This is only one of the many reasons why we should not be too positive in passing judgment on a concern.

(40) A word as to the *form* in which accounts are most easily criticised, assuming you have a series of them and can therefore employ the comparative method. I find it helpful to re-draw the accounts on paper which I have had specially ruled. There are five columns on either side—not five columns each with space for pounds, shillings, and pence, but five single columns for the pounds only, for shillings and pence are not only unnecessary, but are a positive hindrance to a general view. This enables me to deal with the accounts of five years. Also I have in both Balance Sheet and Profit and Loss Account as few headings as possible. For instance, you often find in a Balance Sheet small items among the assets, such as "Rates and Insurance paid in advance." These I group together, or add to the book debts. In this way the main items and their fluctuations stand out clearly.

(41) I have been obliged to deal very briefly with each of the points which I have raised, and it may well be that you are not able to give your assent to them all, and it may well be, too, that there are some other matters with which I ought to have dealt. But I am not anxious to convert you all to my particular critical beliefs. What I do desire is to bring forcibly to your notice the possibility of regarding accounts as living documents—one form of expression of the human personality which is always behind them. Once this fact is grasped, you can make your own rules for criticism, which may easily be an improvement on those I have outlined.

(42) It is highly desirable for your own sakes that you should form opinions about the concerns with which you come in contact, even though these opinions may not be asked for, or may, through shortness of experience, be of no great value. Form them, nevertheless, only see that you have some reason for holding them. "One can prove anything by statistics" is often scoffingly said, to which it has been well retorted that "One can't prove anything without them." And, though it is perhaps treasonable in me as a principal to say so, do not be over-awed by authority. There is a self-respect which is quite compatible with respect to one's elders; it is not necessary to be either subservient or self-assertive. If you honestly and carefully form an opinion it is, or should be, valuable to you because it is your own opinion, though circumstances may arise to make you change it; and one circumstance very likely to arise is the pointing out by your senior or principal of some factor in the case which you had not taken account of.

(43) Finally, while an accountant's first duty is to his client, yet in the course of the performance of that duty he sees so much of the inner workings of the commercial and industrial world that he is in a better position than most men to understand the workings of the huge and complicated machine by which we all live, whether workers or idlers, rich or poor. His special and peculiar knowledge, directed to public ends, may well make him a most useful citizen. "Net profit" is not the be-all and end-all of existence. There is a profit which no accounts can show—which no criticism can destroy—which is to be found in the consciousness of serving our fellow men according to our ability.

## **The Liverpool Chartered Accountants Students' Association.**

### **Syllabus—Spring Session, 1906.**

*President*—Mr. Walter Blease, F.C.A.

*Hon. Secretary*—Mr. W. L. Evans (with Messrs. Chalmers, Wade & Co.).

Mar. 8.—Lecture, "Rights of Partners, *inter se*." Mr. S. S. Dawson, F.C.A.

„ 22.—Lecture, "Some Points in Bankruptcy," Mr. J. Guy Rutledge, Barrister-at-Law.

„ 29.—Lecture, "Preparation of a Statement of Affairs for a Creditor's Meeting." Mr. B. Howarth, F.C.A.

April 5.—Ten Minutes Papers (with discussion).

At the Library, 3 Lord Street, at 6 p.m.

## **Northern Institute of Chartered Accountants.**

### **Annual Meeting—Report and Accounts.**

At the annual meeting, held in the Library of the Institute, 13 Grey Street, on Friday, the 9th February 1906, the following annual Report and the Statement of Receipts and Payments were adopted:—

The Council have pleasure in presenting the twenty-fourth annual report to the members.

The accounts for the year show a balance in hand at 31st December 1905 of £18 16s. 7d.

The present membership consists of 25 Fellows and 25 Associates. The Council would urge upon all the local members of the Institute who are not already members of the Northern Institute to become subscribers.

It is with the utmost regret that the Council have to record the deaths since last annual meeting of their President, Mr. Henry Rawlings; of two members of the Council, Messrs. Richard Ormond and R. W. Sisson; and of Mr. J. M. Winter, who for many years was also a member of the Council. All of these gentlemen took a deep interest in the welfare of the Northern Institute.

Several new books have been purchased for the Library during the year.

The new rules were adopted at a special general meeting of the members held on the 28th April 1905. A copy of the rules was sent to each member.

The Northern Chartered Accountants Students' Society have again had the free use of the Library for their classes, meetings, and lectures. A useful and instructive syllabus for the 1905-1906 session was arranged as follows:—

1905.

Sept. 20.—Presidential Address. John H. Armstrong, F.C.A.

Oct. 18.—Lecture: "Accounts for Income-tax Assessment." W. Swan, F.C.A., Newcastle-on-Tyne.

Nov. 1.—Mock Shareholders' Meeting at Newcastle-on-Tyne. (The Sheffield Society will send three representatives to take part in the meeting.)

„ 15.—Lecture: "Executorship Accounts." Jas. Crake, F.C.A., Hull.

Mock Shareholders' Meeting at Manchester. (This Society will send three representatives to take part in the meeting.)

Dec. 13.—Lecture: "Brewery Accounts and Audits." Herbert Lanham, A.C.A., London.

„ 14.—Second Annual Dinner.

1906.

Jan. 17.—Lecture: "Loose-Leaf Records." Charles Comins, F.C.A., London.

„ 24.—Debate with the Newcastle-on-Tyne Law Students' Society. (This debate is subject to confirmation by the new Committee of the Law Students' Society to be elected in October.)

Feb. 21.—Lecture: "Fraudulent Preferences." B. Morice, LL.B.(Lond.), Lecturer in Commercial Law and Bankruptcy to the Birkbeck College.

Mar. 14.—Lecture: "A Dip into *The Accountant*." J. G. Nixon, Junr., A.C.A., Newcastle-on-Tyne.

April 4.—Second Annual General Meeting.

The Council had the pleasure during the year of presenting to Mr. R. H. Grant the Certificate of Merit awarded to him at the Final Examination in June last.

The Preliminary Examinations of the parent Institute were held as usual, at the Library, in June and December. Fifteen candidates sat at the former examination and 11 at the latter.

The following members of the Council retire in accordance with Rule 23:—Messrs. J. H. Armstrong, Thomas Bowden, and W. B. Ormond.

The Hon. Auditors and the Hon. Secretary and Treasurer also retire, but are eligible for re-election.

A Statement of the Receipts and Payments for the year has been audited, and is now presented.

W. C. FORSTER, Vice-President.

WILLIAM ROSE, Hon. Sec. and Treasurer.

Newcastle-upon-Tyne,  
9th February 1906.

#### STATEMENT OF RECEIPTS AND PAYMENTS for the Year ended 31st December 1905.

<i>Receipts.</i>		£	s	d	£	s	d
To Balance in Bank .. .. .					22	15	8
„ Subscriptions to date, as per Subscription Book:—							
28 Fellows at £1 18. od. .. .. .		29	8	0			
27 Associates at 10s. 6d. .. .. .		14	3	6			
		43	11	6			
Less Arrears .. .. .			0	10	6		
		43	1	0			
„ Entrance Fees:—							
2 Associates at £1 11s. 6d. .. .. .		3	3	0	46	4	0
„ Allowance from Parent Institute, towards Maintenance of Library (one year) to 31st December 1905 .. .. .			30	0	0		
„ Fees for Presiding at Examinations .. .. .			25	4	0		
„ Fees charged for use of Library .. .. .			2	2	0		
		£126	5	8			

<i>Payments.</i>		£	s	d	£	s	d
By Rents, Rates, Gas, Caretaker, &c. .. .. .		53	4	11			
„ Printing, Stationery, Postage, and Sundries .. .. .		15	0	6			
„ New Books .. .. .		13	19	8			
„ Fees for Presiding at Examinations .. .. .		25	4	0			
„ Balance in Bank .. .. .		18	16	7			
		£126	5	8			

Newcastle-upon-Tyne,  
18th January 1906.

Audited and Certified,

HERBERT T. ROSEVEAR, A.C.A.

THOMAS VASEY, A.C.A.

The following officers were elected:—President, Mr. W. C. Forster; Vice-President, Mr. T. Wallace; Council, Mr. J. J. Gillespie; Hon. Auditors, Messrs. H. T. Rosevear and T. Vasey; Hon. Secretary and Treasurer, Mr. William Rose.

At a meeting of the Council, held on Friday, the 16th February 1906, Messrs. J. H. Armstrong and Thomas Bowden were elected to the two vacancies on the Council.

## The Chartered Accountants' Golf Club.

### Medal Competition.

1.	{	T. M. Till .. ..	97 — 13 = 84
		M. Jenks .. ..	99 — 15 = 84
3.		T. D. Cocke .. ..	100 — 15 = 85
4.		W. F. Mapleston .. ..	94 — 6 = 88
5.		T. Wise .. ..	106 — 14 = 92
6.	{	H. F. Turner .. ..	98 — 5 = 93
		A. O. Miles .. ..	102 — 9 = 93
		H. Walters.. ..	109 — 16 = 93
9.	{	D. Hill, Junr. .. ..	100 — 5 = 95
		W. W. Read .. ..	105 — 10 = 95

T. M. Till won on playing off the tie.

### Bogey Competition.

1.	W. F. Mapleston .. ..	all square
2.	H. Walters .. ..	3 down
3.	F. L. Fisher .. ..	5 "
4.	{ H. F. Turner .. ..	6 "
	{ T. D. Cocke .. ..	6 "
6.	{ H. W. D. Soper .. ..	7 "
	{ T. M. Till .. ..	7 "

The above competitions were played at Romford by kind permission of the Romford Golf Club. There were 28 entries, but the wet and windy weather accounted for the rather poor scores.

### Personal.

MR. H. C. FIDGEON, A.C.A., and Mr. B. W. SIMPSON, A.C.A., announce that they have entered into partnership, and have commenced to practise at Cophall House, E.C., under the style of FIDGEON, SIMPSON & Co.

MR. H. GRABAM KING, Chartered Accountant, has been appointed Professional Auditor to the Borough of Ealing.

MESSRS. MACREDIE & EVANS, Chartered Accountants, announce that they have removed to Orchard Chambers, Church Street, Sheffield.

MR. ARTHUR E. PRESTON, F.C.A., of Oxford and London, was on Saturday last elected an Alderman of the Berks County Council, on which he has represented Abingdon

since 1895. Mr. PRESTON has been Chairman of the Education Finance Committee of the County since the Education Act of 1902 came into force.

MESSRS. F. P. WALTER & Co., Chartered Accountants, of London, have opened a branch office at 620 Ashdown Block, Winnipeg, Manitoba, Canada.

### Meetings for the ensuing Week.

**Tuesday**—BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Joint Debate with the Birmingham Law Students' Society. This meeting will be preceded by tea at 6 o'clock, at the Library, 8 Newhall Street.

ROYAL STATISTICAL SOCIETY.—Paper, "Statistics of Population and Pauperism in England and Wales, 1861-1901," by Professor C. S. Loch, D.C.L., at the Society's Rooms, 9 Adelphi Terrace, Strand, W.C.; 5 p.m.

**Wednesday**—LONDON CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Local Authorities and their Work," by Mr. Percy Ashley, M.A., at the Hall of the Institute, Moorgate Place, E.C.; 6 p.m.

SHEFFIELD CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Colliery Accounts," by Mr. A. D. Barber, A.C.A., at the Library, Hoole's Chambers, Bank Street; 6.45 p.m.

KINGSTON-UPON-HULL CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Colliery Accounts," by Mr. E. E. Price, F.C.A., at the Hall of the Incorporated Law Society, Bowlalley Lane, 7.45 p.m.

### Municipal Accountancy.

#### Depreciation of Assets.

(From *The Manchester Guardian*.)

WHAT basis ought municipalities to adopt in making provision for the depreciation and wear and tear of the assets employed in their trading departments? The question, which came up several times in the discussions on the recent Manchester Corporation Bill, is undoubtedly one of extreme importance. Municipal trading is now carried on to an extent which only a few years ago would never have been thought of, and the tendency of it is to increase and develop rather than to diminish.

When a municipality commences a trading project their first step is to obtain the permission of the Local Government Board to borrow money for the purpose, unless such power has been obtained under a special Act of Parliament, as Manchester proposed to do in the recent Bill. The Board hold an inquiry as to the purpose to which the money will be applied, and, if they give their sanction to the borrowing, as a rule impose as one of the conditions that the amount must be repaid within a certain number of years, and that a sinking fund must be commenced into which annual instalments must be paid, which will, with interest, amount at the expiration of the period to the amount borrowed. The term of the loan is varied according to the purpose for which the capital is required. Thus in the case of the Manchester Corporation Waterworks loans are generally allowed a term of sixty years for repayment. In the Gas Department the term has varied considerably, but would appear to average about thirty years; while in the Tramways, in which department the assets are, of course, of widely different kinds, the usual terms are either twenty-five or forty years. The term fixed for the Electricity Department has been generally twenty-five years, with some exceptions. It will therefore be seen that if the life of the assets exactly coincided with the period of the loans, by charging the amount of the annual sinking fund instalments against revenue in the Trading Accounts, by the time the loan became repayable the cash would be ready for the purpose, and the assets which had been acquired by means of the loan would be written off. Assuming that the assets were really worn out and worthless, to replace them it would be necessary to start the same procedure *de novo*, exactly as if commencing an entirely fresh undertaking.

Although, as I have said, the term of the loan is varied according to whether the nature of the enterprise in which the money is to be applied is permanent or otherwise, it is impossible to work safely on the basis that the assets will always last for the term of the loan. Even though the term were fixed entirely on this basis, it would be impossible for every contingency to be taken into account; but as a matter of fact different terms are sometimes fixed for exactly the same class of work, so that it is not a sufficiently stable and certain basis on which to make the calculation. For what is the position if the assets become worn out before the term of the loan has expired? The municipality owes money for which there is nothing to show, the assets acquired with it having disappeared. There are, however, many municipalities working on these lines, providing only what they are legally obliged to do, whether it is likely to be sufficient or not. On the other hand, there are municipalities who make ample provision for depreciation of assets, irrespective of their sinking fund obligations.

### *The Three Systems.*

There are, in fact, broadly speaking, three systems now being followed, viz.:—There are those who

- (1) Charge sinking fund instalments to revenue and consider same to provide for depreciation; or
- (2) Make a charge for depreciation for what is considered to be a proper amount in each case, and out of it provide for sinking fund instalments; or
- (3) Charge sinking fund instalments to revenue, and *also* make out of revenue whatever is considered to be a fit provision for depreciation.

Now what is the position at the expiration of the term of loan under each of these systems?

- (1) If the assets have depreciated more quickly than the sinking fund has been built up, during the last few years of the loan sinking fund instalments have to be provided though the assets have already disappeared.
- (2) In this case the assets are written off during their life. By the time the assets have been written off the sinking fund for the repayment of loan has actually been provided, though the loans may not be due. In both this case and No. 1 by the time the loans are repaid the assets have been written off. If they are worthless, fresh borrowings must be undertaken in order to replace them.
- (3) In this case when the loans become repayable the money is ready for the purpose, the assets have been written off, and there is a fund in hand to replace those assets without further borrowing.

Which is the best system to adopt? To my mind No. 2 commends itself as being the most equitable and, commercially speaking, correct. If all municipal Trading Accounts were prepared on this basis comparisons between their results and those achieved by private undertakings, which at present seem so difficult to make, would be rendered very much more simple and reliable. For, strictly speaking, the length of time allowed for repayment of a loan ought not to determine the charge against revenue unless it is based exactly upon the life of the asset, and this it cannot be to any reliable extent. It is fixed before the assets are acquired, while, on the other hand, depreciation is fixed at the end of the trading period with a full knowledge of all the facts available for guidance.

There can be no doubt which is the most prudent course of all to adopt—viz., No. 3. The point is whether it does not err on the side of prudence so much as to tax the present generation heavily for the benefit of posterity. I think it certainly does. Yet this is what is being done by the Glasgow Corporation in connection with their tramway system. They are practically going to make a gift to the next generation of a complete tramway system. That

is to say, when their present borrowings become repayable, assuming the present undertaking to be worn out and absolutely worthless, they will have a fund in hand which would be sufficient to furnish a complete new and modern system without further borrowing. But is it a fair assumption that the present system will, as a matter of fact, be absolutely worn out and worthless? In all probability it will be in working order, and therefore worth something. Therefore the Glasgow people will have—(a) A tramway system, maybe rather the worse for wear, but in working order; (b) funds in hand to provide an absolutely new system; (c) all liabilities extinguished.

This appears to me to be rather hard on the present generation. The more correct course would seem to be to depreciate the assets on a liberal scale, so as to aim at being on the safe side, and out of that provision to set aside sinking fund instalments. Even then the coming generation will be on the right side, as the assets will, as a rule, always be worth at any rate something at the time when they are entirely written off in the books.

#### *The Practice in Manchester.*

The policy of the Manchester Corporation in respect of this matter seems to be a little haphazard. It may perhaps be correctly described as being No. 1 in the main, with exceptions in certain cases. As the professional auditors in their report for the year 1904-5 point out, no depreciation has been provided in the accounts for the year in either Gas or Water Department, though of course sinking fund instalments have been charged against revenue. In the Electricity Department an amount of £38,327 17s. 4d. was provided for depreciation in addition to sinking fund instalments, which latter, owing to the short life of the plant, would not be sufficient for depreciation. In the Tramway Department the depreciation for the year was £71,701 14s. 5d. in addition to sinking fund instalments. It is evident that in the case of the last two departments the amount to be set aside for sinking fund has not been considered sufficient to cover the depreciation for the year, and therefore an additional charge has been made. This, however, only goes to prove that to allow the sinking fund to determine the amount of depreciation is a wrong basis, in which the element of chance enters largely, and which is likely to lead to difficulties. The more satisfactory and scientific method would be to charge full depreciation at what is considered to be the correct rate in each case.

#### *The Need for a Definite Policy.*

We have now to consider the other important point of principle—viz.: Assuming that full depreciation is charged in the accounts, is it necessary also to charge the sinking fund instalment? I have already pointed out in the case of the Glasgow Corporation Tramways what is the effect of

such a course. The question is, Is it fair as between one generation and another? It seems to me that if a generous rate of depreciation is allowed there will always be something to hand over for the benefit of posterity. Whatever that value turns out to be it is a gift to our successors; and in some cases, where property has been largely maintained out of revenue, will no doubt be a very handsome one.

Clearly we ought to know which system we intend to follow. At present each department seems to be acting independently of any central idea. In their report on the Electricity Department for the year 1904-5 the professional auditors say, with reference to the amount charged for depreciation:—

If it is the intention to provide for replacements at the end of the life of the plant by means of this fund, and not to re-borrow for the purpose, in our opinion the above provision is entirely inadequate. If, on the other hand, it is intended to re-borrow, it should be borne in mind that the life of the plant is probably much shorter than the period allowed for the repayment of the loans, which in no case is less than 25 years; therefore powers would have to be obtained for loans for the same purposes for which there would be existing loans.

Surely on a matter of such extreme importance as this our policy should be absolutely clear and well-defined.

## **Failures and Bills of Sale in England and Wales.**

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Mar. 9th, was 190, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 100; Deeds of Arrangement registered, 90. The respective numbers in the corresponding week of last year were: Bankruptcies, 109; Deeds of Arrangement, 89—total, 198; being a decrease of 8. The total number of commercial failures recorded during the 10 weeks of the present year is 1,695; the total number recorded in the corresponding 10 weeks of last year was 1,840, showing a decrease of 145.

The number of Bills of Sale, including Re-registrations filed in England and Wales for the week ending Friday, Mar. 9th, was 190. The number in the corresponding week of last year was 172, showing an increase of 18. The total number filed during the 10 weeks of the present year is 1,576; the total number filed in the corresponding 10 weeks of last year was 1,708, showing a decrease of 132.



### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Mar. 9th, amounted to £1,350,040, by way of addition to £1,873,570, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,332,868, showing an increase of £17,172. The total amount registered during the 10 weeks of the present year was £14,892,326 (in addition to the issues in previous years by the same companies), as compared with £17,654,255 for the corresponding 10 weeks in 1905, showing a decrease of £2,761,929.

## The Profession in Scotland.

### Society of Accountants in Edinburgh.

#### *Report by the President and Council to the Annual General Meeting.*

THE President and Council beg to make the following Report to the members on the proceedings of the past year:—

The Joint Committee of the Councils of the Societies of Chartered Accountants in the United Kingdom held one meeting during the past year, at which matters of general interest to the profession were discussed.

The "History of Accounting and Accountants," which was written on behalf of the Chartered Accountants of Scotland, was published in the early part of the year, and was received with general approbation. A copy was issued to each member of the Society.

The President and Council have had under consideration for some time the arrangements connected with the Library. In view of the dimensions to which it has grown, it being now fairly complete as regards Accounting, Actuarial, Economic, and Legal works likely to be consulted, and of the increasing use made of it, the Council resolved, after full deliberation, to appoint a Librarian, and at the same time to extend the opportunities given to members to borrow books,

and to permit apprentices under certain conditions to do so also, a privilege which they do not at present enjoy. Mr. Alfred Fairhurst has been appointed to the new office, and has taken up his duties. The new bye-laws for regulating the use of the Reading rooms and Library are appended to this report.

The usual course of lectures in conjunction with the Institute of Bankers will this year be delivered by Professor Nicholson—his subject being "National and Municipal Finance."

The Evening Classes for apprentices continue to be fully taken advantage of.

The attention of the President and Council was recently drawn to a published prospectus in which a firm composed of two accountants, practising under their combined names, one of whom is not a Chartered Accountant, while the other is a member of this Society, was designed "Chartered Accountants," and the letters "C.A." were adhibited to the firm's signature to the certificate of profits. The member of this Society on being communicated with explained that the use of the term "Chartered Accountants" was due to an oversight, and would not be repeated, but he claimed for his firm the right to use the letters "C.A."; at the same time, however, expressing his willingness to adhere loyally to a law prohibiting such use if passed by the Society.

The right to the designation of Chartered Accountant in Scotland and the relative abbreviation is not founded upon or regulated by the laws of the Societies, but rests upon long usage, confirmed by decisions of the Court. The President and Council consider it highly undesirable in the interests of Chartered Accountants, as well as in the public interest, that such a loose practice in connection with the use of the letters "C.A." should be allowed to grow up.

A special general meeting of the Society was held on 21st July 1905, at which new members were admitted and a resolution passed to have a portrait of the President painted for the Society and a replica thereof presented to Mrs. Carter.

The report of the General Examining Board for the past year has been issued. The usual statements showing the number of members and apprentices of the Society at the close of the year, and an abstract of the accounts for 1905, are appended hereto.

## ABSTRACT OF TREASURER'S INTROMISSIONS for the Year ending 31st December 1905.

CHARGE.		DISCHARGE.	
1. Funds at 31st December 1904 (exclusive of the value of Heritable Property, No. 27 Queen Street, and the Furniture, Books, and Pictures of the Society therein):—		1. Payments to the Endowment and Annuity Fund Trustees, being one-half of the Entrance Fees received from 27 New Members .. .. .	£1,417 10 0
£2,000 2½% Consolidated Stock at cost .. .. .	£1,797 6 0	2. Expenses in connection with Examinations—	
£650 4½% Debenture Stock of the Great Central Railway Company, at cost .. .. .	1,047 1 0	Treasurer of General Examining Board, proportion of net outlay for year to 31st December 1905, payable by this Society .. .. .	£113 16 6
£750 4% Consolidated Preference No. 1 Stock of the North British Railway Company at cost .. .. .	1,105 7 3	Sundry Expenses at the Examinations at Edinburgh .. .. .	8 10 6
£1,000 Canadian Government 4% Stock—redeemable 1907—at cost .. .. .	1,035 1 0		122 7 0
	4,984 15 3	3. Special Expenditure—	
Deduct: Balance at Debit of Current Account with British Linen Company Bank, less cash in hands of Treasurer .. .. .	90 18 7	Grant to Accountants' Company Q.R.V.B., R.S. .. .. .	10 10 0
	4,893 16 8	History of Accounting and Accountants .. .. .	265 19 10
2. Entrance Fees from 27 new Members, admitted February and July 1905 .. .. .	£2,835 0 0	4. Feu-duties, Taxes, Insurance, Furnishings, and Repairs for 27 Queen Street .. .. .	276 9 10
3. Fees for Registration of Indentures .. .. .	46 4 0	5. Outlay in Wages, Coal, Gas, Newspapers, &c., for 27 Queen Street, £205 8s. 4d., whereof repayable by Institute of Bankers, £102 14s. 2d. .. .. .	69 10 5
4. Interest on Investments, &c. .. .. .	152 2 3	6. Corporation Duty .. .. .	102 14 2
5. Rent payable by Institute of Bankers, £100, and Rent of back premises, £25 .. .. .	125 0 0	7. Expenses of Management—	14 13 9
Sum of Receipts .. .. .	3,158 6 3	Salary to Secretary and Treasurer for 1905 .. .. .	£160 0 0
		Auditor's Fee for 1905 Accounts .. .. .	10 10 0
		Printing, Stationery, &c. .. .. .	56 14 4
		Share of cost of Official Directory .. .. .	24 12 7
		Travelling Expenses, including share of Expenses of Joint-Committee .. .. .	25 1 3
			276 18 2
		8. Books purchased for Library and Binding .. .. .	137 0 9
		9. Fees for Evening Classes and Lectures at 27 Queen Street, £110 5s. 8d., less fees received from Students, £51 9s. .. .. .	58 16 8
		Sum of Payments .. .. .	£2,476 0 9
		10. Funds at 31st December 1905 (exclusive of the value of Heritable Property, No. 27 Queen Street, and the Furniture, Books, and Pictures of the Society therein):—	
		£2,000 2½% Consolidated Stock at cost .. .. .	£1,797 6 0
		£650 4½% Debenture Stock of the Great Central Railway Company at cost .. .. .	1,047 1 0
		£750 4% Consolidated Preference No. 1 Stock of the North British Railway Company at cost .. .. .	1,105 7 3
		£1,000 Canadian Government 4% Stock—redeemable 1907—at cost .. .. .	1,035 1 0
		£750 Transvaal Government 3% Guaranteed Stock at cost .. .. .	745 9 8
			5,730 4 11
		Deduct: Balance at Debit of Current Account with British Linen Company Bank .. .. .	154 2 9
			5,576 2 2
			£8,052 2 11

EDINBURGH, 18th January 1906.—Having examined the Account of the Intromissions of Mr. Richard Brown, C.A., as Treasurer to the Society of Accountants in Edinburgh, for the year ending 31st December 1905, of which the above is an Abstract, I beg to report that I have found it correctly stated and sufficiently vouched, subject to the approval by the Society of the Expenditure in connection with the "History of Accounting and Accountants," and of the increase of the salary of the Secretary and Treasurer as from 1st July 1905. I have also examined the Security Writs for the Invested Funds, and have found them in order.

EDWARD BOYD, C.A., Auditor.

## STATEMENT OF THE NUMBER OF MEMBERS AND APPRENTICES OF THE SOCIETY AT 31st DECEMBER 1905.

## Members.

The number of original Members of the Society was..	62
Deaths and resignations from 1854 to 31st December 1904 .. .. .	58
Do during current year .. .. .	1
	59
Leaving .. .. .	3

## Members admitted since 1854 to 31st December

1904 .. .. .	490
Do. during current year .. .. .	27
	517
Deaths, resignations, &c., up to 31st December 1904 .. .. .	83
Do. during current year .. .. .	8
	91
Leaving .. .. .	426
Total Membership of the Society at 31st December 1905 .. .. .	429

*Apprentices.*

Indentures recorded in the Books of the Society to 31st December 1904 .. .. .	917
Do. during current year ..	44
Total Indentures recorded	961
Deduct—	
Indentures cancelled before completion, or of which no discharge has been recorded though expired for more than <i>two</i> years ..	166
Indentures of gentlemen who have not passed the Final Examination, although the Indentures have expired for more than <i>two</i> years and been discharged .. .. .	89
Indentures of gentlemen who have become Members of the Society .. .. .	502
Indentures of gentlemen who have passed the Final Examination but have not yet been elected Members .. .. .	26
	783
Leaving .. .. .	178
Being—	
Indentures, which expired during 1904 and 1905, of gentlemen who have not yet passed the Final Examination .. .. .	26
Indentures current at 31st December 1905 ..	152
As above .. .. .	178

**Personal.**

Messrs. John E. Watson & Son, Chartered Accountants, of 149 St. Vincent Street, Glasgow, announce that Mr. William Gilchrist, who has been associated with the firm as managing clerk for the past twelve years, has been assumed as a partner. Mr. Gilchrist is a member of the Institute of Accountants and Actuaries in Glasgow. The business will continue to be conducted under the firm name of John E. Watson & Son.

The businesses of Rattray Brothers & Co., C.A., and Alexander & France, C.A., both of Glasgow, have been amalgamated, and will henceforth be carried on under the name of Rattray Brothers, Alexander & France, at 115 St. Vincent Street, Glasgow.

Mr. J. W. Stewart, C.A., 150 Hope Street, Glasgow, intimates that he has assumed as a partner Mr. Peter Stewart White, a member of the Institute of Accountants and Actuaries in Glasgow. The co-partnership will be carried on under the name of J. W. Stewart & Co.

The firm of Kelly & Brown, C.A., 150 Hope Street, Glasgow, of which Thomas Kelly and A. Herbert Brown were sole partners, has been dissolved of mutual consent. Mr. Thomas Kelly will continue business at 150 Hope Street, and Mr. A. Herbert Brown at 180 Hope Street.

**Municipal Trading.**

Professor Shield Nicholson, on the 6th inst., delivered his closing lecture in Glasgow to the Glasgow Chartered Accountants Students' Society and the Institute of Bankers in the Accountants' Hall, St. Vincent Street. Mr. John Mann, Junr., C.A., presided over a good attendance.

Taking for his subject "Municipal Trading," Professor Nicholson said the term "municipal trading" might be held to cover all the operations of any local authority which, if undertaken by a private company, would be expected to yield a profit. It excluded many forms of municipal enterprise which also required a large capital outlay, and in general involved an annual charge—poor-houses and asylums, public parks, municipal buildings, &c. In this wider sense municipal enterprise was rather to be compared with private benevolence than with private trading, and its primary function was to provide those public works and institutions which were beyond the scope of private charity or enterprise. With the progress of society and the growth of wealth we ought to expect an increase of municipal expenditure for these purposes, but this admission of itself raised a strong presumption against the local authorities taking over those functions which were adequately performed by associations or individuals whether for profit or charity. As a general rule, if there was money in a thing private enterprise would be forthcoming, and under the stimulus of private effort the service would be provided at less real cost to the community. Even as regarded food supplies we relied on private trading, though occasionally the seventeenth century idea of public granaries was revived. Competition benefited the consumers not only by a reduction of prices, but by improvements in quality and in the facilities of acquisition, as in railways, though there was no war of rates, there was active competition as regarded speed and convenience. The example of railways, however, illustrated the tendency so marked in recent years, though always in operation, for competition to be replaced by combination. In all branches of industry there had been an increasing tendency to production on a large scale and amalgamation. This was shown not only in manufactures, but in transport, and the distributive processes of wholesale and retail trade and in banking and the organisation of credit. The creation of trusts, cartels, and the like, showed how excessive competition and production on a large scale tended to facilitate the growth of industrial monopolies. But whenever monopolies arose the presumption was in favour of some kind of State control in the interests of the public. This had always been admitted when the monopoly obtained privileges from the State, as in the compulsory acquisition of property. When the monopoly arose from natural combination, State regulation was not so simple, as the experience of America

showed, and the idea was encouraged that the State, either by the central or local authority, should take monopolies into its own hands. Municipal trading in the case of monopolies was advocated on two grounds:—First, that the monopoly would prove a convenient source of revenue; and second, that the interests of the public would be promoted by better management. If the main object was profit, and the price was fixed higher than it need be, then the consumers were taxed to the extent of the monopoly revenue, and the policy must be judged by the principles applicable to the taxation of commodities. In general it was not desirable to tax necessities—*e.g.*, water—and except in the case of necessities the tax would only fall on a certain class of consumers—*e.g.*, of electric light, and would so far be unequal. The extent of the tax could only be measured if they took account of the alternative methods that were possible under State regulation, though not under State management. On the whole, it did not seem that there would be much surplus revenue from the municipal trading itself and what there was would be of the nature of a tax.

In estimating the profit to be attained they ought to compare this method with other methods. The local authority might make a concession of any of its privileges for a term of years to a company, and at the end of the term there would be an opportunity of revising the terms of the concession, and capturing any unearned increments. They ought to be careful in estimating the profit on municipal trading to allow for all the expenses that would be involved if in private hands, as it was often by the omission of some of these elements that the net gain of municipal enterprise seemed larger than it really was. Allowances ought also to be made for the risk involved, for municipal trading was almost entirely carried on on borrowed capital, and there might be a fall in the value of the capital invested either through improvements in the methods of supply or through changes in demand—substitutes might be found, or the locality might not grow at the rate expected. The rapid growth of municipal debts showed that these dangers were not illusory. In 1900 Sir Henry Fowler made an analysis of the municipal trading of the boroughs of England and Wales, and of the capital provided, and after allowing for interest, repayment of capital, working expenses, &c., he found that there was a profit balance of about one-half per cent. on the outstanding debt. The rapid growth of debt had induced the local authorities all over the Kingdom to appeal to the smaller investor for deposits. By the extension of the middleman, the corporations and the public might share the saving effected, but there were two drawbacks. The deposits were not invested, as they would be by a banker, and the competition naturally provoked the retaliation of the banks, so that at a time of financial strain the corporations

might have a difficulty in meeting the monetary demands. When municipal trading was supported on the ground of better management or various social objects other than profit the details varied with different cases, but there was generally a tendency to routine and backwardness in adopting new methods. There was also the danger of extravagance and other abuses of an expanding bureaucracy. That was, perhaps, the most effective argument against municipal trading, especially when they considered that everything pointed to an enormous increase in the proper or obligatory functions of local authorities.

#### REAL "HOWLERS."

Writing in "Past and Present," the journal published monthly in connection with the Friends' Schools, Mr. E. B. Collinson quotes the following "genuine" howlers, which, he states, have been noted in examinations conducted at Ackworth, Bootham, Kendal, Rawdon, Sibford, and a few other places:—

An abstract noun is the name of something that has no existence, as goodness.

An abstract noun is one that cannot be felt, heard, seen, touched, or smelt.

An autobiography is the life of an animal written after it is dead, as a moral.

Chaucer wrote in middle-class English.

The adjective formed from sister is Cistercian.

A hybrid means a mongrel and a mongrel is a dog which is ill-bred.

A syllable is a word expressed by one movement of the mouth.

Joan of Arc was a pheasant's daughter, dressed in a man's clothes and went to fight the English and was slain, and her soldiers said don't you think you had better wait till to-morrow to besiege Rouen.

The Wars of the Roses killed a lot of the important knights and they never got another start.

Elizabeth had a better claim to the throne than Mary for she had possession nine-tenths of the throne by law.

Far away on the deep the Spanish Armada saw the beacon fires twinkling in endless chain from St. Michael's Mount to the Yorkshire Moors, and knew that England was ready.

Five Mile Act.—Every parson must preach more than five miles off his church.

Charles I. was going to be married to the Infanta of Spain; he went to see her and broke it off at once.

The Pilgrim Fathers thought it better to be out of this wicked world and so colonised in Massachussets.

Rome is noted for its Catacombs, where skulls of great people are kept. These are very long and dismal.

Every German goes to school at an early age, however old he is.

An axis is an imaginary line on which the earth is supposed to take its daily routine.

The Pharisees were people who liked to show off their goodness by praying in synonyms.

"A sower went forth to sow and as he sowed he fell by the wayside and thieves sprang up and choked him."

"And having our loins girt about with the helmet of salvation."

The larynx is the voice-box and shuts when we swallow it.

Liquids expand when heated, e.g., if a kettle is placed on the fire with water in it and all means of ventilation stopped up the kettle would bounce off the fire from the great force which was made inside it which it wanted to let escape.

A line is the shortest distance between two dots.

A surface is the very top which you cannot see.

A solid is that which hasn't any space under the circumference.

A circle is the amount taken in by the line which goes all round.

Parallel straight lines even if produced to eternity cannot expect to meet each other.

An undergraduate is (1) a person not up to the mark; (2) a lower class of board school.

An optimist is a person who attends to people's eyes.

When a word gets out of date it is termed "dead" and so gradually a language is built up.

**HARMSWORTH ENCYCLOPEDIA.**—Parts 25 (Lockwood—Marjoram), 26 (Mark—Moabite Stone), and 27 (Moberly—Negro) have now been issued. Each consists of 160 pages, and costs 7d.

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April 14th 1904 .. .. .	3½%
" 21st " .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th " .. .. .	3%
" 28th " .. .. .	4%

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*President of the Institute of Accountants and Actuaries in Glasgow.*

# The Accountant

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VOL. XXXIV.—NEW SERIES.—No. 1633.]

SATURDAY, MARCH 24, 1906.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

**John Mann, Esq., C.A.**

WE are pleased to be able to give a portrait of Mr. JOHN MANN, C.A., in this week's issue. Mr. MANN has been elected President of the Institute of Accountants and Actuaries in Glasgow for the ensuing year after having served for several periods on the Council of that body. He is now the "doyen" of the



profession in his native city of Glasgow. Mr. MANN was one of the Founders of the Glasgow Institute in 1853, and is at the present time the only survivor of the original members. Although in his eightieth year, he still keeps in active touch with all the business of his firm of JOHN MANN & SONS. He has been in active practice on his own account for a period of fifty-five years, having at an early age, through a succession of deaths, become sole partner in one of the oldest accountancy practices in Scotland, founded by HENRY PAUL. The office records date back continuously to 1816—a period of ninety years.

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#### Auditors and Prospectuses.

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SO few company prospectuses have been issued of recent years that the question raised by our correspondent "Interested" last week has fallen somewhat into the background. None the less is it one of no little importance to the profession generally.

There is probably no very great difference of opinion as to the position of an accountant whose certificate is issued as an integral part of the prospectus of a new company. While the law with regard to the matter is undoubtedly in a very unsatisfactory state, and the responsibility of the certifying accountant is thus anything but serious in the absence of fraud, it is hardly likely to be seriously disputed that the certifying accountant is responsible for the literal correctness of the facts which he certifies, and further, if he values his reputation, must satisfy himself that his certificate is not distorted so as to appear to cover more than it really does. Among some of the most obvious

defects coming under these headings are certificates foretelling future results upon very inadequate data, and certificates purporting to state average annual profits from the results of a period considerably shorter than even a single year. A very bad example of this last-named defect was advertised comparatively recently, but in the present article we propose not so much to deal with the position of the certifying accountant as with the question raised by our correspondent "Interested," namely, the proper attitude to be adopted by the accountant who has had nothing to do with the preparation of the prospectus, but who allows his name to be mentioned therein as the auditor of the company. In the absence of fraudulent intent there can, of course, be no possible liability incurred by the accountant under such circumstances, no matter what misstatements or omissions there may be in the body of the prospectus itself. There is no law requiring an accountant to inquire as to the *bona fides*—still less as to the probable success—of a company, before agreeing to act as its auditor; and the mention of his name upon the front page of the prospectus is merely a statement that he has agreed to act as auditor, and is no representation that he is either directly or indirectly responsible for the *bona fides* or prospects of the company.

But while this undoubtedly is the legal aspect of the matter, the fact remains that the object of publishing the auditor's name at all is to use it for the purpose of inducing applications for shares. It being common knowledge that it is so used, and that in many cases its use has the effect anticipated, it is clear that no accountant who has any regard for his reputation can safely allow his name to be placed upon the prospectus of a company without first satisfying himself that he can do so without

suffering damage in consequence. If he looks at the matter from this point of view he will, we think, be quite adequately and also quite effectively safeguarding the interests of those members of the investing public who may be affected by the presence or absence of his name on the front page of a prospectus.

As to the exact inquiries to be made in each case before consenting to act, much will in the nature of things depend upon circumstances. Our correspondent indicates a course of procedure which in all normal cases would be sufficient, but which, it seems to us, is in some respects unnecessarily minute. Inasmuch as the auditor who is not also the investigating accountant has in no way contributed to the construction of the prospectus, it is only necessary for him to consider its contents for the purpose of satisfying himself that the undertaking is formed with such a reasonable prospect of success as he would wish to see in connection with all undertakings for which he acted. In many cases it may be that the constitution of the board is quite sufficient assurance to the auditor for all practical purposes; but if the directors, or some of them, are unknown to him, or if he is not convinced in his own mind that anything which they undertake is good enough for him to be connected with, then clearly further inquiry becomes desirable. We do not think, however, that that inquiry need ever take the form of seeing whether the prospectus is strictly in order from a legal point of view; that is outside his sphere.

The position is, of course, very different when the auditor's certificate as to past profits forms a more or less important part of the prospectus itself. In such a case the only

prudent course would appear to be for the auditor to regard himself as responsible, along with the directors, for the substantial accuracy of the prospectus as a whole; and in particular he should, we think, have nothing to do with a company where it is sought by cleverly-concocted sentences to convey the view that the auditors' and valuers' certificates are more favourable than is in point of fact the case. Even here, however, no definite rules can be laid down. The prospectus may read badly, and yet the undertaking itself may be perfectly honest and straightforward; on the other hand, the prospectus may read extremely well, and yet the undertaking be one with which the accountant could only be connected, even as auditor, at the risk of his professional reputation.

#### What is an Incorporated Accountant ?

IN our Law Reports this week will be found a full account of the proceedings of the motion heard by Mr. Justice WARRINGTON on the 16th inst. in *The Society of Accountants and Auditors v. Goodway and The London Association of Accountants*, which raises several questions of the greatest importance. It will be remembered that in our issue of last week we reported another motion that was heard before his Lordship, to stay the action on the ground that there was no such body in existence as the plaintiffs as described in the title of the proceedings.

Dealing with the earlier motion first, this was brought forward by the defendants on the ground that the writ had been issued by the plaintiffs in the name of the Society of Accountants and Auditors (Incorporated 1885). They urged that there was no body entitled to the

use of that corporate name, and that, therefore, they were entitled to a stay of proceedings, as in the event of the action being dismissed with costs against the plaintiff it would be impossible for them to recover such costs from a non-existent body. His Lordship, however, allowed the writ to be amended, with the result that what may be described as the main issue came before him on the 16th inst. in the form of a motion for an injunction against the defendants.

It requires but little penetration to appreciate the significance of the cross-motion heard on the 9th inst. The weak part of the Society's case was that the word "Incorporated" is no part of its registered title, and that, indeed, the use of the expression "Incorporated Accountants" by members of the Society was in the nature of an afterthought. By attaching the words "Incorporated 1885" to their registered name the Society have of late sought to more closely connect their corporate name with the title ordinarily adopted by their members; but one of the strongest points of the defendant Association was, of course, that the Society had no exclusive right to confer upon its members the term "Incorporated Accountant." Under these circumstances the cross-motion dealt with no mere technicality, nor with a mere question of costs, which we think it may fairly be taken were never seriously in doubt. It must rather be regarded as a preliminary encounter which went far to decide the issue in the following week.

With regard to this main issue, his Lordship held that the plaintiffs had failed to prove—and as far as there was any evidence at all it was the other way—that the use by them of the name and the absence of the use of the name by other persons had caused it to acquire that

reputation with the public which was essential in order that plaintiffs should maintain an action. Without going into the merits of the case, he held that for the purposes of an interlocutory action the evidence was not sufficient, and he therefore refused the motion, with the usual order as to costs.

The plaintiff Society appears to have relied chiefly upon the Scottish C.A. case; but while the weakness of the plaintiffs in each case is identical (in that neither the Scottish Charters nor the Society's memorandum and articles of association gave power to grant any distinctive title to members), the strength of the Scottish Societies' case was, of course, the unrivalled reputation enjoyed by Chartered Accountants in Scotland, which could not be gainsaid. To put it no stronger, it cannot for one moment be suggested that the professional reputation of members of the Society is unrivalled; and that being so, the authority quoted is not very helpful, apart, of course, from the fact that a Scottish decision is not a precedent in England. If the Society decides to continue the proceedings, and the action is eventually heard upon its merits, it will, of course, be competent for the plaintiffs to argue that it was quite unnecessary for the members of the defendant company to adopt the title "Incorporated Accountants" in order to be able to act for clients in income-tax cases; but whether their prospects of ultimate success are sufficiently rosy to justify further litigation is, of course, a matter that will call for their further and careful consideration.

In the meantime, a much more serious question arises—namely, as to whether, in view of this decision, membership of the Society is of any practical value. With regard to the Institute, however, we do not for one moment

think that Mr. Justice WARRINGTON's decision of this week is at all applicable. There would be no difficulty in demonstrating the reputation attaching to the term "Chartered Accountant" in this country. The difficulty in the way of the Society was to prove a reputation attaching to a title which, in the first instance at all events, was conceived in imitation of the Institute's title, and adopted by persons who were not eligible for admission to the Institute. It is safe to assume that no Royal Charter would be granted to any other body of professional accountants, and if the members of any Society not incorporated by Royal Charter were to usurp the title, the position would be entirely different to that which came before Mr. Justice WARRINGTON in *The Society of Accountants and Auditors v. The London Association of Accountants*. As to the position of the Society itself, we must admit that it seems sufficiently serious, for not only is the exclusive right of its members to the term "Incorporated Accountant" denied, but their position will be in no way improved if, in order to avoid misunderstandings, they were now to adopt some new name. It seems to us, however, that the situation is the logical product of what has gone before. No company incorporated under the Companies Acts, whether or not it has obtained the license of the Board of Trade to omit the word "limited" from its name, can confer any distinctive title upon all or any of its members. From time to time, and especially of recent years, many such companies have claimed this right, and hitherto it does not appear to have been judicially contested. It seems to us, however, that before anyone can claim the prescriptive right to the use of a distinctive name, he must first establish his own right to use it, and that is

the weak point in the armour of the Society which, it seems to us, is absolutely fatal to its pretensions.

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#### A Faculty of Commerce in relation to Accountants.

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THOSE of our readers who take an interest in the development of commercial education, and who foresee in this movement something likely to advance the dignity of the profession of accountancy, will be greatly interested in the paper read at a recent joint meeting of the Manchester Society of Chartered Accountants and the Manchester Chartered Accountants Students' Society, by Professor CHAPMAN, M.A., M.Com., the Dean of the Faculty of Commerce of the University of Manchester, a full report of which appeared in our issue of the 24th ult. It is unnecessary for our present purposes that we should go over the whole of the ground covered by the lecturer, the more so as we discussed the matter fully some years since when the first Faculty of Commerce inaugurated in this country was started by the University of Birmingham, and, again, when the University of Manchester first announced its intention of following in Birmingham's footsteps. For our present purposes we propose rather to contrast the apparent aims of these two Universities, and to discuss the results likely to be achieved under the different conditions obtaining.

We gather from the paper now before us that at Manchester the subject is regarded from two points of view. A certain knowledge of accounts is regarded as a *sine qua non* of every business man's equipment, and such a knowledge is to be insisted upon from every candidate for the degree of B.Com. In addition

to the compulsory subjects, however, each candidate is required to exhibit a proficiency in certain subjects selected according to the profession he proposes to enter, and one of these subjects is Accounting, dealt with upon such a standard that, according to Professor CHAPMAN, nobody can acquire the requisite knowledge unless he has done work in an accountant's office. The hours at which the necessary lectures are given are, however, arranged at times to suit the convenience of men engaged in actual business during the day. On the other hand, at Birmingham, Accounting is dealt with as a compulsory subject; and to judge from the time devoted thereto the standard required from all candidates would appear to be considerably higher than that proposed at Manchester, while what may be regarded as "special" accounting, or accountancy, finds no place in the B.Com. curriculum, being, we believe, reserved for the M.Com. At Birmingham, students are required to devote the whole of their time to their studies while in residence, but they are encouraged to place breaks between the sessions, and to fill up those breaks with practical work in connection with the class of occupation which they may desire to ultimately pursue. The course is thus only open to business men on the condition that during the time they are actively studying at the University they leave every vocation and devote themselves exclusively to study.

It will be of interest to see which of these two ideals produces the best results in practice, but, for obvious reasons, any premature conclusion upon the subject is to be deprecated; for, until a fairly large number of degrees have been conferred, the personality of the graduates will naturally count for far more than the merits of the course of instruction

through which they have gone. The fact that Manchester lays itself out for evening students would naturally place at its disposal at once a far larger number of comparatively mature students, who, when they have graduated, will be qualified not merely academically, but also by several years of practical business experience. At Birmingham, on the other hand, practical experience on the part of graduates will probably be the exception rather than the rule; and although with the increased number of hours per week devoted to study better theoretical results ought doubtless to be achieved, these results may require readjustment in the light of experience to be subsequently acquired after graduation. That at least seems to be what one might expect, viewing the matter logically, but, of course, in the nature of things much must depend upon the precise nature of the instruction imparted at each University, and upon the mental material upon which each has to work. The Birmingham ideal would appear to be more in accordance with that of the older established Universities, regarding its first degree as a guarantee of ability, but not of experience; whereas at Manchester the instruction would appear to be grounded less upon University lines—which may, of course, be a considerable advantage, but from the point of view of those who have worn the gown may be regarded rather as proper for a diploma than for a degree.

Doubtless both Universities realise that they are embarking upon a new idea, and have yet to discover the precise means by which the objects intended may be best accomplished in practice; and however different their methods may be, the probabilities are that their ultimate object is in each case very

similar. Inasmuch as experience alone can indicate the best methods, it is unquestionably of advantage that Manchester, instead of slavishly following the lead of Birmingham, should work out its own programme upon its own lines—lines, moreover, which seem to be especially suited to its local requirements. That the movement will meet with a reasonable measure of support among Manchester accountant students can, we think, hardly be doubted; and, with a view to removing all unnecessary obstacles, we agree that it might be desirable to regard the passing of the Preliminary Examination of the Institute, or of one of its equivalents, as equal to the Matriculation Examination of the University. Such a concession could, however, in the nature of things only be made temporarily, as being a complete reversal of the normal order of events. On the other hand, the Matriculation Examination of the University of Manchester certainly ought to be added to those entitling candidates to exemption from the Preliminary Examination of the Institute—if, indeed, that somewhat obvious step has not already been taken.

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### Some Legal Terms.—III.

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#### Property and Possession.

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[BY OUR LEGAL CONTRIBUTOR.]

IT is not only essential to the proper comprehension of such branches of "Mercantile Law" as the "Sale of Goods," "Bailments," "Pawn, Mortgage, and Lien" that the student should clearly grasp and discriminate between the terms "Property" and "Possession," but he will also find such knowledge serviceable in the region of the "Rights and Duties."

For instance, in connection with the "Sale of Goods" he will read that on a sale of specific goods the "Property" therein passes irrespec-

tively of delivery, that the "Property" in stolen goods sold in market-overt reverts in the owner on the conviction of the thief; whilst, on the other hand, that "Possession" is what is to be looked at when dealing with questions of "Lien," or "Stoppage *in transitu*." Again, when tackling the "Rights and Duties," he will scarcely understand, unless he has some such knowledge, the fundamental distinction between the position of a Trustee in Bankruptcy and that of a Receiver or Liquidator, and why one should possess the right of Disclaimer and the others not.

To commence then with "Property." The term "Property" is in ordinary language employed to express what belongs to a man, what he owns, and in law it is also used in this sense. As a legal term, however, it has an additional meaning, and is used to denote "Ownership," or the right of property. As an instance of its former usage we speak of a thing as being "my property," whilst as an instance of the latter we talk about the "property" in a thing sold passing to the purchaser.

By "Property," meaning thereby "Ownership," or the "Right of property" or "Dominion" as it is sometimes called, we imply the most plenary control over an object which the law allows. I say advisedly "as the law allows," for the fullest ownership is not absolute, but subject to various restrictions. A man, for instance, cannot use his property in such a way as to injure or annoy another, a principle well summed up in the legal maxim, "*Sic utere tuo ut alienum non laedas*." Again, supposing that I am the owner of my house, I may indeed destroy it, but not by blowing it up with gunpowder, or by fire, and so possibly injuring my neighbour, nor may I allow my trees to overhang another's land without being liable for any injury caused thereby. A man, too, may be deprived of his property on bankruptcy, or by allowing a term of prescription to run against him; nor is his power of disposing of his property unlimited, e.g., he cannot leave real property to charities or in such a way as to transgress the rule against perpetuities.

In English law "Property," as denoting the thing owned, is classified into "real" and "personal."

"Real Property" comprises land—with the exception of leaseholds—and certain other species of property artificially created real property by statute, *e.g.*, New River Shares. "Personal Property" includes all other kinds of property.

Of these two classes Real Property, or land, cannot be the subject of "Ownership," all land being in theory held of the King, who alone is the absolute owner, a subject being at the most only able to acquire "Estates," or "Interests" therein, *e.g.*, estates in "fee simple," "fee tail," or "for life." Personal property, on the other hand, is capable of being the subject of "Ownership."

Let us now turn to "Possession," a far more thorny subject, the difficulties of which, however, arise for the most part from the ambiguous use of that term. For, first, "Possession" may be used to signify a mere physical fact—*viz.*, the *physical* relationship existing between a given person and a given tangible object or thing. Secondly, it may express the *legal* relationship existing between such a person and thing with respect to other persons. In the latter case there is implied, in addition to the mere physical retention, an intention to hold or retain the object, either as against the whole world, or the whole world excluding certain classes or individuals. Lastly, "Possession" is sometimes used to express the mere "Right to possession," known also as "Constructive Possession."

All this may perhaps be made clearer by way of illustration. Let us suppose, for instance, that I lease this room from my landlord, that the furniture is supplied on the hire system, and the books by a circulating library. Here I am in "actual legal possession" of the room, books, and furniture, and I also have the "right to possession," but subject to my right the landlord, furniture dealer, and library have also, in virtue of their ownership, a "right to possession."

Let us now further suppose that you casually pick up one of the books, *you* may now be said to be "in possession" of it as expressing the physical relation existing between you and the book, but you cannot be said to be in the "actual legal possession,"

since you have no intention of holding it as against anyone. Supposing, however, you change your mind, and deprive me of the book, intending to keep it for your own, then you may truly be said to be in "actual legal possession," and all that will be left to me will be the "right of possession."

In the above illustration it will be seen that "Ownership" only incidentally comes in question, and that "Possession" and the "Right to possession" are the important matters. It will also, I think, be sufficiently clear that whereas "Possession," whether meaning thereby mere physical possession or actual legal possession, can exist but in one person at one and the same given moment, the "Right to possession," on the other hand, is capable of existing in more than one person contemporaneously, although as between those persons themselves it will exist subordinately, as, in the example given, the "right of possession" of the library is subordinate and exerciseable only subject to mine.

Although "Possession," "Legal Possession," and "Right to Possession" have in the foregoing illustration been represented as divorced from and independent of one another, and of "Ownership," it is not, of course, to be supposed that they must necessarily always be so. Far from it, for where "Ownership" or "Property" exists in its fullest sense it will be found to include all those elements: a fact easily recognisable if we suppose that the books in the illustration given are returned in due course to the library, when "Possession," "Legal Possession," and "Right to Possession" will all be absorbed in "Ownership," and co-exist in one and the same person, *viz.*, the owner—*i.e.*, the library.

Clearly then "Possession" is not "Ownership," but although that is so, yet there are circumstances in which the law regards it as equivalent to ownership, or perhaps, to be more accurate, as a conclusive badge of ownership, or where, to use a gallicism "*Possession vaut titre*."

For whilst it is true that no one can effectively deal with the "Property" in a thing, or, in other words, confer a good title to it, save its owner, or those whom he may authorise—a principle summed

up in the maxim "*Nemo dat quod non habet*"—yet the law in determining the underlying question "*Quis habet?*" or who is, or who in its eye is to be deemed to be the owner, frequently decides in favour of the apparent possessor as against the true "owner." This it will do on the principle of *estoppel*, where it can be shown by a person taking from the apparent possessor that the true owner has so acted as to mislead him into the belief that the person dealing with the property had authority to do so. To illustrate my meaning I will just give one or two examples from the Sale of Goods Act, the Factors Act, and the Bankruptcy Act.

The first of these provides that where goods sold are allowed to remain in the "Possession" of the seller, with the consent of the purchaser, and the seller resells to a third person, who takes *bonâ fide* and without notice of the previous sale, that the third party is to get a good title, or, in other words, that the "Property" is to pass to him by virtue of the second sale. So, too, in the converse case, where the unpaid seller allows the goods to get into the "Possession" of the purchaser and he transfers them to a *bonâ fide* purchaser who has no notice of any lien, &c., of the unpaid vendor, such second purchaser acquires a good title to the goods.

Again, under the Factors Act, where a mercantile agent is, with the consent of the owner, in possession of goods any sale, pledge, or other disposition of the goods made by such agent when acting in the ordinary course of business of a mercantile agent, is as valid as though *expressly* authorised by the owner, providing the other party to the sale, &c., acts in good faith and has no notice of the agent's want of authority, and a good title to the goods is accordingly conferred on the purchaser, pledgee, &c. Similarly, the Bankruptcy Act provides that goods in the possession, order, or disposition of the bankrupt with the consent of the true owner, under such circumstances that the bankrupt is the reputed owner, are to be regarded as his (the bankrupt's) property, and to pass to his trustee in bankruptcy.

## Weekly Notes.

**Corporations as Carriers.** A correspondent forwards an extract from Mr. Justice Farwell's judgment in the *Manchester Corporation* case, in support of that portion of the leader in the *Municipal Journal* which we italicised in our issue of the 24th ult. At the outset, we may say that this is not a question, so far as we are concerned, of municipal trading, for municipal trading may be said to be, to a certain extent, a political matter, and therefore we are not in any way interested. The point is as to the *interpretation* of the judgment. Our contemporary stated that the corporation could "continue to use the cash on delivery system," but, if we turn to the judgment itself, we find that they could only continue to use the cash on delivery system if this was part of the business of a common carrier, and Mr. Justice Farwell stated that he had no evidence that it was part of such business. Furthermore, the condition that the parcels must pass over the tramway system surely means that the transaction must be essentially one of tramways. As put by our contemporary, it might be taken that a few yards of the tramway system were all that was necessary to define "tramway-borne goods." We are reluctant to accept this view, and we do not think our hesitation is unreasonable.

### What are Partnership Profits?

The question asked by our correspondent "M. B. C." last week is one of some importance. It seems to us that in the case of a partnership all expenditure authorised by the partners, or by any one partner acting *infra vires*, is chargeable against the current year in the absence of express stipulation to the contrary. Save by mutual agreement, we do not think that any expenditure could be spread over the profits of successive years unless it clearly represented a payment in advance, the benefit for which would be experienced over the whole of the term against which the expenditure was charged. For what it is worth, however, we may point out that in connection with undertakings whose accounts are kept upon the double-account system the normal procedure is to charge against current revenue all parliamentary expenditure connected with oppositions. We therefore incline to the view that the whole of the cost of the parliamentary expenses must be charged against the six thousand pounds, and the balance only divided according to the agreed arrangements for the division of profits.



**The Temperance Permanent Building Society.** The fifty-second annual report and accounts of the Temperance Permanent Building Society have now been issued, and show a considerable advance upon all previous figures. The liability on shares and deposits stood on the 31st December last at £1,798,219, and the amount secured by mortgages at £1,883,007. These figures are more than twice as large as the corresponding figures of twelve years ago, while the stability of the Society during that period is evidenced by the fact that the reserve fund has increased from £48,403 in 1893 to £117,157 in 1905. In 1878, the twenty-fifth year of the Society's existence, the reserve fund was only £4,015.

**The Westbourne Park Permanent Building Society.** The accounts of the Westbourne Park Permanent Building Society for the year ended 31st December last have now been issued. They show receipts for the year amounting to £376,000, and a surplus profit (after providing for interest on shares) of £1,408. The total amount of assets was £682,806, of which £634,891 is invested in mortgages, no one mortgage exceeding £2,000 and the majority not exceeding £500. No properties are in the possession of the Society, and in no case is the interest upwards of twelve months in arrear. We notice that at the twentieth annual meeting, which was held recently, a well-known Nonconformist minister presided, although he does not appear to be in any way connected with the management of the undertaking.

**The Engraving of Share Certificates.** Much astonishment is being expressed in America that no law was violated by the engraving company which, some little time ago, furnished blank certificates used in connection with the forgery of some stock in a well-known transatlantic concern. A New York contemporary says:—

"Here was a perfect stranger approaching this engraving company's manager, with no other introduction than a forged letter to himself written on ordinary hotel note paper, and then ordering and receiving from the concern blank certificates of a corporation representing, when properly filled out and signed, a market value of more than \$3,000,000! According to the forger's specific instructions, these certificates were ordered lithographed—not engraved, as the rules of the New York Stock Exchange require—and to have the manufacturer's name omitted from the corner; but both these extremely suspicious circumstances did not deter the manager from taking the job and executing it. A

looser and more hazardous transaction in a most important and delicate line of business cannot be imagined. Yet it may easily be repeated any day—many times and in many places, in fact—and with the most disastrous results."

It is reported that the rules of the New York Stock Exchange limit to eight engraving companies, American and foreign, the production of certificates that constitute "good deliveries." A suggestion is made in Wall Street that the printing of unauthorised and fraudulent certificates should be made a criminal act, but this is hardly in accordance with our standard, for we should have difficulty in punishing an engraver who innocently, and in the ordinary course of his business, became a party to a fraud. Nevertheless, a great amount of care should be exercised, and we doubt very much whether any of the best firms in this country could be easily imposed upon.

**Bankrupts and Bookkeeping.** The desirability of amending the Bankruptcy Act, with a view to securing more careful accounting by traders, was the subject of comment at a meeting of creditors at Birmingham recently. The bankrupt, in reply to questions, stated that he had kept no record of receipts or payments. He kept an account of his takings during the first three weeks he was in business, but neglected to do so afterwards. The manager of his branch shop had not been required to keep any account of the takings, and, as he had not kept any account of the stock sent to that shop, debtor had no check over the manager. The Official Receiver remarked that, in connection with the absence of proper books, things would never improve until it was made a criminal offence for a man to fail to account for moneys received and paid. Mr. Jaques said the Millers' Association were dealing with the question of bookkeeping, and they intended approaching the Board of Trade with a view to making it a penal offence for a trader not to keep a record of receipts and payments.

**"The Iniquities of the Income Tax."** Mr. T. Hallett Fry is contributing a series of articles under the above heading to the columns of *The Financial Times*. In the first paper, after setting off against evasions of the tax the many persons who fail to take advantage of their right to exemption or abatement, it is said that "the smaller business taxpayers are great sufferers, for these seldom keep accurate accounts and

"are consequently at the mercy of the Surveyor of Taxes, who may, if he is so disposed, put up their assessments from year to year until the amount of the profit . . . bears no reasonable relation to the actual profit on the business. This is the case very largely with small shopkeepers, who have no proper system of accounts, and who endeavour by some method to get at approximately the amount of the profit made by them. In such cases it is difficult for any assessment to be successfully combated, and if an appeal be made against the amount demanded they are required to furnish satisfactory accounts for three years—very often an impossible feat to a small trader without any accountancy experience, and who does not feel justified in incurring the expense of a clerk capable of keeping the necessary books, and producing therefrom accounts which will be acceptable to the Surveyor of Taxes and to the Income Tax Commissioners." It is rather difficult to share Mr. Fry's sympathy with the small trader who does not keep books, for indeed that very laxity of accounting is one of the evils which, it is hoped, intended legislation will suppress. The small trader does not keep books, not because of the expense of a clerk, but because it more often than not suits his purpose better; for if he succeeds the facts will manifest themselves, and if he fails the knowledge of impending disaster is spared to him until the catastrophe happens. What sympathy could be expected by a man who would walk to save a tram fare and spend sixpence in apples on the road? As to appeals, Mr. Fry has nothing good to say of the General Commissioners. They are, he observes, residents in the neighbourhood of the appellant; they may be trade competitors; they do not necessarily know anything of the Income Tax Acts; they order the taxpayer out of the room when considering their verdict, but permit the Surveyor to remain closeted with them. Complaint is also made that there is no appeal from their decision on questions of fact. We agree that the constitution of the Court is faulty, and that the procedure not always equitable; the alternative of resort to the Special Commissioners might be more used than it is, but educating the public is a difficult task. It has always seemed to us that income-tax appeals might more reasonably be heard by an official referee, or some officer acting in a judicial capacity who is neither a man in business (and likely to favour his fellows) nor an employee of the Inland Revenue Department. The constant striving for reform must tell in the long run, and some day perhaps the ideal method will be evolved.

#### Income Tax and Mining Dividends.

In the House of Commons last week Mr. Bottomley asked the Chancellor of the Exchequer whether he was aware that many large shareholders in South African mining companies were in the habit of altering their addresses upon the Share Registers, prior to the declaration of a dividend, to make it appear that they were resident in South Africa for the purpose of escaping liability for income-tax upon such dividends. In his reply Mr. Asquith stated that the Board of Inland Revenue had no knowledge of such a practice. The taxation of the profits of companies, of which the seat of direction and the register of shareholders were situated in the United Kingdom, was assessed on the companies themselves and not on the individual shareholders. For that reason the addresses of the shareholders were not of interest to the collectors of the income-tax. Mr. Bottomley probably knew this before—we wonder whether there was anything at the back of his query?

#### Life Assurance.

According to a recently-issued Blue Book, containing returns relating to life assurance companies and a summary of the insurances in force, based on returns deposited for the most part during the past five years, the number of assurances, under the heading of "Ordinary business," is given as 2,303,422, the total amount assured being £737,380,494. The industrial business, not including sickness and friendly society contracts, is returned at £241,869,649, the number of assurances reaching 24,668,532. The figures of the colonial and foreign companies are not included.

#### Railway Passengers' Assurance Company.

The fifty-seventh annual report and accounts of the Railway Passengers' Assurance Company, for the year ended 31st December last, were submitted and approved at the annual general meeting held on the 7th inst. The accounts show a net premium income of £308,077, being an increase of £16,000 on 1904. Compensation, however, absorbed £172,607, against £157,991 in the previous year, with the result that the balance to the credit of Revenue Account shows an improvement of about £8,000 only. On the Balance Sheet it is to be noted that although the lease of business premises, expiring in 1937, has already been entirely written off out of revenue, the facts are clearly shown, and there is thus no attempt at a secret reserve in this direction. The dividend sanctioned, together

with the interim dividend already paid, amounted to 8s. per share, free of income-tax, the shares being of the nominal value of £10 each, on which £2 has been paid up. The dividend is thus at the rate of 20 per cent. on the paid-up capital.

**Informal Deeds of Arrangement.** We are informed that the two letters which we drew attention to in the article appearing in our issue of the 10th inst. do not relate to the same case, remarkable as the coincidence undoubtedly is. We have further been asked if we can see any objection to an insolvent estate being wound up without a deed of arrangement being executed, provided all the creditors disclosed by the debtor agree. The question is one which, it seems to us, cannot be very satisfactorily answered in general terms, in that no arrangement outside bankruptcy can be altogether satisfactory unless at least the *bona fides* of the debtor may be safely taken for granted. If, however, there is no reasonable ground for doubting that a complete disclosure has been made, and that all creditors have been consulted, it would be difficult to see what valid objection could be raised. The danger is, of course, that there may be both undisclosed liabilities and undisclosed assets, as well as irregular transactions voidable in bankruptcy; and for these reasons there must, we think, be always some risk attending such an arrangement, although clearly there could be no question of professional impropriety on the part of the accountant concerned.

**Limited Partnerships.** Lord Avebury's Limited Partnerships Bill, which has now passed the House of Lords, proposes to legalise in this country a species of partnership, or association, which is already well-known in most continental countries, proposing as it does to distinguish between active or general partners, whose liability for the debts incurred by the firm is to be limited, and passive or sleeping partners, whose liability is to be limited to the amount of capital subscribed by them. There can be no possible objection to a well thought-out measure upon these lines being enacted, but it may be pointed out, for what it is worth, that what is for all practical purposes exactly the same thing already exists, having been provided for so long ago as 1867 by Sections 4 to 8 of the Companies Act of that year. It is not quite clear why a power which has been entirely neglected, as applied to companies, should be expected to prove attractive

under the name of limited partnerships, but it would be at least equally unobjectionable under the newer name. Why, however, the active partners of an undertaking should be registered with an unlimited liability when they can as readily register with a limited liability is somewhat of a mystery.

**The Ocean Accident and Guarantee Corporation, Ltd.**

The thirty-fifth ordinary general meeting of the Ocean Accident and Guarantee Corporation, Ltd., will be held on Tuesday next, the 27th inst., when a special resolution will be submitted to reduce the company's name to the more convenient title of "The Ocean Assurance Corporation, Ltd." The accounts for the past year show a net premium income of £1,081,181, against compensation claims amounting to £605,826. The balance to the credit of revenue at the end of the year is £446,288. Of this, however, £350,500 is set aside as a reserve for unexpired risks, being £5,500 more than the provision for that purpose at the end of 1904. The proposed dividend, including the interim dividend paid last September, will be at the rate of 20 per cent. per annum. Along with the accounts is a detailed list of investments and other assets amounting in all to £1,452,924. The basis of valuation is not stated, but, in some cases at least, it appears to be above market price. For instance, Consols are valued at 110. Doubtless the ample reserves are sufficient to provide for any loss likely to arise under this heading, but the method of retaining such assets at cost entirely irrespective of their current values is one that cannot be altogether commended. The Corporation has recently issued a circular drawing attention to the fact that it is willing to act as trustee under a will or settlement for debenture-holders, or of property of any description, as well as executor of a will. Power will also shortly be sought, we understand, for it to extend its operations to fire insurance.

## Current Law.

### ADMINISTRATIONS.

*In re Sharp (dec.); Ricketts v. Ricketts.*

Swinfen-Eady, J.

Held, that trustees who have paid annuities without deducting income-tax are, in the absence of express authority contained in the will, guilty of a breach of trust, and liable to repay to the estate the amount so

overpaid, subject to the Statute of Limitations except in respect of overpayments to one of their number.—(Times, Mar. 19.)

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]

## Licenses and Compensation.

[The lessee can deduct the proportion of the Compensation Fund charge from the ground rent. As regards the further question, where the rack rent and ground rent are paid, as is usually the case, by different persons, such deduction can be made from both rents, though not necessarily at the same percentage. Presumably, a similar course could be adopted under the circumstances supposed.—OUR LEGAL CONTRIBUTOR.]

## Claim against Sureties—Laches.

[The most recent cases bearing on the point in England are *Mayor, &c., of Kingston-upon-Hull v. Harding* (1892, 2 Q.B. 494); *Mayor, &c., of Durham v. Fowler* (22 Q.B.D. 394); *Guardians of Mansfield Union v. Wright* (9 Q.B.D. 683); and the older case of *Black v. Ottoman Bank* (15 Moore's Privy Council Cases 472). There is also an American case *Watertown Fire Insurance Company v. Simmons* (41 American Reports 196). We know of no colonial cases on the subject.—OUR LEGAL CONTRIBUTOR.]

## Accountants as Debt Collectors—Form of Ultimatum.

(To the Editor of The Accountant.)

SIR,—Would your legal contributor kindly inform your readers what phraseology is permissible from an accountant collecting debts on behalf of a client, so as

not to infringe the rule or custom which (as I assume) only allows a solicitor to threaten proceedings on behalf of a third party? Assume that in the following phrase I am not exceeding the authority given me by my client, am I exceeding that which the law allows me:—"I am instructed by my client to say that unless "the amount (&c.), legal proceedings will be commenced "without further notice"? Or must it be ". . . "amount (&c.), he will commence legal proceedings, " &c."?

Your obedient servant,

17th March 1906.

S.

## Companies Act, 1900, s. 12, sub-s. 2.

(To the Editor of The Accountant.)

SIR,—The Companies Act of 1900 (Section 12, Sub-section 2) requires the directors, at least seven days before the statutory meeting, to forward to every member a report (a copy of which must be filed with the Registrar) giving *inter alia* "an abstract of the receipts "and payments of the company on Capital Account to "the date of the report." The nature of the capital expenditure to be included appears to be an open question, and to depend on the circumstances of each case—questions placed in different quarters have elicited divergent opinions, and references to half-a-dozen standard authors reveal the fact that they are absolutely silent in this connection.

Will you, Sir, or any of your subscribers, kindly enlighten me as to the principle or custom that obtains in complying with the provision of the Act, and what distinctions, if any, should be observed?

Yours faithfully,

19th March 1906.

MOOT POINT.

[See Dicksee's "Auditing," pages 328-32 (Sixth Edition.)—ED. ACCT.]

## Obituary.

### Arthur Banister, F.C.A.

We regret to record the death, in his 61st year, of Mr. Arthur Banister, F.C.A., 13 Bartlett's Buildings, Holborn, E.C., and 32 Acre Lane, Brixton, S.W. The interment took place at Norwood Cemetery on the 15th inst.

## Leeds and District Chartered Accountants Students' Association.

### The Requisites of a Contract.

By MR. W. E. FARR, Solicitor, Leeds.

At the usual monthly meeting of the Chartered Accountant Students, held at the Law Institute, Albion Place, Leeds, on Thursday evening, February 22nd, a lecture on "The Requisites of a Contract," was delivered by Mr. W. E. Farr, Solicitor. There was only a small attendance. Mr. F. Atkinson occupied the chair. He thought Mr. Farr required no introduction, as he had been with them on previous occasions, and, therefore, he at once called upon him to give his lecture.

Mr. Farr said one of the main things about contracts is that they are a product of the common law. The common law comprises a good many subjects, but contracts are almost entirely and exclusively the domain of the common law, because, except so far as they are affected by Acts like the Sale of Goods Act and the Bills of Exchange Act, they have never been the subject of statute law.

I should define a contract as an agreement which creates an obligation to do or refrain from doing some act; and I think that definition is wide enough to comprise all the essentials of a contract, and it can not, without being inaccurate, be made any shorter.

#### *The Requisites of a Contract.*

The requisites of a contract are four:—

- (1) There must be two or more persons to the agreement, because a man cannot contract with himself. He must contract with somebody else.
- (2) There must be a distinct intention common to both parties.
- (3) The intention must be known to both parties; and
- (4) The parties must contemplate the assumption of legal rights.

I think those four requisites can perhaps be put into one main requisite of a contract—viz., that there must be a common promise between both parties. Therefore, in the case of an agreement to sell there must be a contract to buy by the buyer and a contract to sell by the seller; and, therefore, when you get a common promise to buy and to sell, then you get a contract—that is to say, there is a promise on each side. There are three elements which are necessary in order that there may be a valid contract enforceable at law:—

- (1) The offer must be communicated by one party to the other.
- (2) The parties must be capable of making a valid contract; and
- (3) The objects of a contract must be legal.

If those three elements exist, then you have a valid contract which is enforceable at law.

The text-book writers pay a great deal of attention to offer and acceptance, and, after all, that is the basis of every contract—an offer by one party and an acceptance by the other. There must also be a consideration, because unless there is a consideration there is no valid contract—that is to say, there must be something moving from each party to the other; it must either be a pecuniary payment or some act done or some act which the parties refrain from doing. Unless there is a consideration there is no contract, and, therefore, one of the things always to consider in dealing with the question as to whether or not there is a contract between A. and B. to purchase a thing or to do a thing is, "Is there any consideration?" and if you find no consideration by either party to the other, then, of course, you have got no contract. In the case of *Creas v. Hunter* (19 Q.B.D. 345) A. was indebted to B. and B. took a promissory note from A.'s son for the amount of the debt. The father died and A.'s son was sued on his promissory note, and he said, "I received no consideration for the promissory note." If he could have substantiated that defence he would have succeeded in his action, but the jury inferred a consideration—viz., a forbearance by the plaintiff not to sue, and, therefore, the holder of the promissory note was held entitled to succeed because one of the main elements of a contract existed—viz., there was a consideration. If there had been no consideration—if, for instance, the promissory note had been given and there had been no forbearance to sue—then, of course, the holder of the promissory note could not have recovered because it would have been given without consideration. The acceptance of an offer which constitutes a contract must be communicated to the person who makes the offer. You cannot have a mental assent to an offer. Supposing I offer to sell you a certain thing and you are silent, there is no contract. You must actively communicate to me your decision that you are going to accept my offer. That is not necessarily a communication in words; it may be a communication by conduct, but there must be some communication in order to constitute a contract between the parties. The best illustration of that is a guarantee. If a guarantee is given by A. to a bank on behalf of B. the bank must signify their acceptance of the guarantee, and, therefore, on receiving a guarantee from a person on behalf of another, the safe way—the proper thing to do—would be to write a letter to say you accept the guarantee. Of course, you could act under the guarantee, and if the

person giving the guarantee knew that you were acting under it, then, of course, the acceptance of the guarantee would have been communicated by conduct, but there must be a communication of the acceptance, otherwise there is no contract. Another illustration of the necessity of communicating the acceptance of an offer is found in the case of *Felthouse v. Bindley* (11 C.B.N.S., 869). That was a case in which a man said he would buy a certain horse for £30 15s. The owner of the horse said nothing, but he decided in his own mind that he would sell and so accept the offer. He was having an auction sale, and he told the auctioneer not to include that particular horse in the sale. The auctioneer made a mistake and included it in the sale, whereupon the man who had offered £30 15s. brought an action against the auctioneer. It was held that he had never communicated his acceptance of the offer to the person making it, and, therefore, there was no contract of sale. The owner of the horse decided to accept the offer in his own mind, which was shown by his course of dealings with the auctioneer, but he never communicated his acceptance of the offer to the person making it, therefore there was no contract. One of the distinguishing marks of a contract is, as to whether or not the parties have been *ad idem*, that is to say, have been of one mind, concerning the subject-matter and the terms of the contract. Therefore, if you are considering as to whether or not a contract has been entered into between A. and B. either by a certain course of action or by correspondence, what you have to find is a moment of time when the parties were of one mind. If you find a moment when you can say the parties were then *ad idem* then you have got a contract, but there must be a moment of time when both parties are agreed upon all the terms and conditions which each are going to impose on the other. If you can once put your fingers on a time when both parties were agreed with regard to the subject-matter of the contract, then you have got a contract, valid, complete, and binding on both parties.

Now, let me consider the answer to the interesting questions: How long does an offer remain open? Can it be withdrawn at any time? Does it remain open for a reasonable time? Perhaps the best illustration of the answer to these questions is the case of *Cooke v. Oxley*, which was decided in 1796. That was a case in which a man offered to sell some tobacco to another about twelve o'clock in the day, and said he would keep the offer open till four in the afternoon. Before four in the afternoon he sold the tobacco to another person. It was held that there was no obligation on him to keep open his offer, because there was no consideration for doing so, and, therefore, the person who wanted a little longer time to consider as to whether or not he should purchase the tobacco had no legal remedy. Of course, there was a breach of the moral obligation imposed on the defendant to keep the offer open till four o'clock. If, therefore, you want to have the advantage of a

continuing offer you must give some consideration to the party making it. You must either pay him money or give him some advantage, because an offer can be revoked at any time, unless there is a consideration given to the person making the offer to keep open the offer for a certain time. Now, will you consider the question, Can an offer be revoked at any time? A good illustration by which to answer that question is to be found in the case of *Offord v. Davies* (12 C.B., N.S. 748). That was a case in which the defendants offered to guarantee the payment of bills of exchange discounted by the plaintiffs for another firm, and when a certain number of bills had been discounted they got tired and they said, "We are not going to guarantee the payment of any more." The plaintiffs continued to discount further bills, and on default in payment of the bills they sued defendants on the guarantee. The Court said the offer to guarantee was revoked as regards all bills discounted after notice of the revocation, and consequently the defendants were not liable.

I now come to another very interesting matter in connection with contracts—viz., an offer and an acceptance made through the medium of the post. You know how common it is in these days for contracts to be made by correspondence. The usual method of communication is by post. In the case of *Adams v. Lindsell* (1 B. and Ald. 681) an offer was made by a man to sell wool to another. The letter containing the offer was dated September 2nd, and he said, "receiving your answer in course of post." The letter was misdirected and did not reach its destination till the 5th, and the person receiving the letter at once accepted and wrote back accordingly. In the meantime the wool had been sold to somebody else. It was held there was a contract between the parties because the post was the medium indicated by the offerer for the acceptance of his offer, and directly the letter accepting the offer was put into the post there was a contract between the parties. The Court said: "The defendants must be considered at law as making 'during every instant of time their letter was travelling, 'the same identical offer to the plaintiffs, and then the contract is concluded by the acceptance of it by the latter,'" so the moment the letter is put into the post, accepting the offer received by post, that moment there is a contract between the parties. Does it make any difference if the letter is lost and never reaches the offeror? In the case of *The Household Fire Insurance Company v. Grant* it was held that, although the letter of acceptance was lost and never reached the offeror, yet, nevertheless, on proof of posting of the letter accepting the offer a contract is entered into between the two parties. The person accepting the offer had done all that it was necessary for him to do, and all that he was asked to do by the offeror, to send a letter accepting by post. If he was asked to give a certain signal signifying his acceptance, giving the requested signal would constitute

a contract between the two parties. Therefore, the most important point to remember in this matter of contracts by post is, that the contract is completed, not when the letter of acceptance reaches its destination, but when the letter accepting it is put into the post. The mere writing of the letter would not be an acceptance of the offer; it is the putting of the letter into the post in reply to the letter received by post containing the offer that makes the contract complete. In the recent case of *Heathorn v. Fraser*, 1892 (2 Ch. 27), the offer was delivered by hand, and the acceptance was sent by post. Lord Herschell said: "Where the circumstances are such that according to the ordinary usage of mankind the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted." *Heathorn v. Fraser* is, therefore, an authority that in these modern days, as the post is the means of communication commonly used between man and man, if you accept, by post an offer which has reached you by hand, the contract is complete the moment the acceptance is put into the post.

Now let me refer to that class of contract in which there is a revocation of the offer and an acceptance by the person to whom the offer is made, before the revocation reaches him. The revocation of the offer must come to the knowledge of the person to whom the offer is made before the acceptance, otherwise there is a contract; therefore if a man has made an offer to a man in America, and after the letter has got on its way he sends a letter by the next mail revoking his offer, and before the second letter reaches its destination the person to whom the offer is made accepts the offer contained in the first letter, there is a contract, as the revocation must come to the knowledge of the acceptor before the acceptance is posted, otherwise there is a contract. In the case of *Dickinson & Dodds* (2 Ch. D., 463) an offer was made to be kept open till Friday at nine o'clock. On the preceding day the person making the offer sold the land, the subject of the offer, to another person. Before the plaintiff accepted the offer he knew that the land was sold to another person. The Court held in that case that, as the plaintiff had knowledge that the land was sold to another person, necessarily he knew that the offer was revoked, and the acceptance, with that knowledge, did not constitute a contract between the parties. Supposing the plaintiff had had no knowledge of the sale of land, and in the absence of that knowledge he had accepted the offer, then, in my opinion, there would have been a contract between the parties, and although the plaintiff could not have obtained specific performance of the contract, the land having been sold to another, he could, nevertheless, have obtained damages for breach of contract against the person making the offer.

Now let me deal with another class of contracts, viz., contracts in which there is an offer made to the whole

world and accepted by a particular individual. The classical case illustrating this class of contract is *Williams v. Carwardine* (4 B. and Ad. 621.) That was a case in which a man met with his death under mysterious circumstances. His brother issued an advertisement offering a reward of £20 to any person who would give information as to the circumstances by which the deceased had met his death. A certain woman, some time after, who was with the deceased at his death, became very ill; she thought she was going to die, and, in order to lighten her conscience, she made a statement as to the circumstances under which the person, the subject of the reward, had met with his death. She did not die as she expected; she got better, and thereupon she sued for the £20. The defence was that she never acted on the offer, that the reason why she made the statement was in order to lighten her conscience, as she thought to make it better for her when she got to another world, and, therefore, she was not entitled to the £20. The Court said: It does not matter what the motive was, there was an offer, and she accepted the offer. We are not going into the reasons why she accepted the offer. There is a contract between the parties, and she is entitled to the £20. This interesting point arises, supposing she did not know of the offer, can a person, if an offer is made in that general way to the world, accept an offer which she is ignorant has been made? The view of Sir William Anson is that the offer must be known to the person accepting it or it cannot be accepted. The question the judge put to the jury in *Williams v. Carwardine* was, as to whether or not the plaintiff intended to comply with the advertisement when she made the statement. The jury said, "No; she did not, she made the statement in order to lighten her conscience, not with the object of accepting the offer," but in my opinion she would not have been entitled to the £20 if she had no knowledge whatever that no offer had been made. As to this there is no evidence whatever in the report of the case.

Another illustration of this offer to the world in general, accepted by a particular individual, is to be found in the case of *The Carbolic Smoke Ball Co.* (1892, 2 Q.B., 484.) That was a case in which a company put on the market a remedy that was advertised to prevent influenza, and so much faith had they in their remedy, that they undertook to pay £100 to any person who had influenza after following the directions contained on their direction sheets, and they said they had deposited (as indeed was the fact) £1,000 with the bank in order to pay any claims that might be made. I daresay they hoped that the careless, negligent English public would never carefully follow their directions, and, therefore, if influenza did unfortunately overtake the purchaser of one of their smoke-balls, they would not be liable for any action for damages, but they had not calculated on the patience and perseverance of the English lady, Mrs. Carlill. She bought a smoke-ball, and followed

carefully and accurately the directions, and used the smoke-ball so many times a day for so many days in the week, and then she had influenza, whereupon she brought an action against the vendors for £100, and it was held the company had made an offer to the whole world, which was accepted by Mrs. Carlill, so, as there was a contract, she was entitled to the £100. Supposing you go by a shop and you see an article in the window ticketed 5s., and you say "that is a very nice thing; it is worth 20s., I will go in and buy it," and you go inside and say "I will have that article for 5s." and the shopman refuses to sell it, and you think "I am entitled to it, and I shall sue for damages for breach of contract," in my opinion the Court would hold these circumstances only an invitation to treat, which is not the same thing as an offer. You must have an offer to constitute a contract, and, therefore, if you have what is only an invitation to treat for the sale of an article, an acceptance of such an invitation does not constitute a contract. Again, the offer must be one which is intended to create legal relations; so, if I offer to entertain you to dinner to-night, and you accept, and when you arrive there you find no host and no provision made for entertaining you, that does not constitute a legal contract for the breach of which you can obtain damages in a Court of law. In a case in which a man had some marriageable daughters, and he said he would give £100 to any man who married a daughter of his with his consent, a man acted on it, and married the daughter, and then asked for the money, and, on being refused the money, he sued the girl's father for the £100. The Court said "No, that is not an offer which is intended to create legal relations, so is not a contract in the eyes of the law," so the plaintiff was burdened with a wife, but minus the £100.

There is another point in connection with acceptance of an offer I wish you to remember—viz., the acceptance of an offer to constitute a contract must be absolute, or there is no contract, and this is well illustrated by the old case of *Jordan v. Norton* (4 M. and W. 155). In that case a man offered to buy a horse provided it was warranted "sound and quiet in harness"; and the answer came back that the horse was "sound and quiet in double harness." Then one of the parties said there was a contract. The Court said, "No; the man offered to buy the horse provided it was sound and quiet in harness," and the answer came back that "the horse was sound and quiet in double harness; therefore, that is no contract, because the acceptance is not absolute."

Another illustration is to be found in the case of *Honeyman v. Marryat* (6 H.L.C., 112). That was a case in which a man proposed to sell property to another, and the person to whom the offer was made accepted it, subject to the terms of a contract being arranged between their solicitors. It was held there was no contract because the acceptance was not final,

but subject to a discussion and decision to be arrived at between the agents of the respective parties.

A further illustration of the same point is to be found in the case of *Appleby v. Johnson*, where a man offered to be a salesman to another having a list of customers on whose dealings he should receive commission. The master replied accepting all the terms of the salesman's letter, but there was this sentence in it relating to the list of customers: "I have made a list of customers we can consider together." The Court held there was no contract. The list of customers was one of the terms of the contract. That was to be considered, and therefore, until that had been considered and a decision had been come to, there was no contract. So be quite sure when you are considering whether there is a contract between A. and B. constituted by an express offer that the acceptance is absolute, as otherwise there is no contract. Of course, there is a class of contracts where the offer or the acceptance is implied either by the usages of trade or by the course of dealings between the parties. A good illustration of an implied contract is: where one man takes a lease of a house and the lessor instructs his solicitor to draw the lease, nothing is said by the ignorant tenant with regard to who is going to pay the costs. There are a great many people who think that if they do not employ the solicitor they are not liable to pay for his services. The lease is duly drawn and executed, and there is a demand for payment of the lessor's costs. The lessee, not having employed the solicitor, would naturally think he would not have to pay the cost, but in connection with the leasing of a house there is a custom that the lessor's solicitor's costs shall be paid by the lessee, and therefore, although as between solicitor and lessor the lessor is liable to pay his solicitor's costs, the lessor can recover the same from the lessee, as there is an implied contract that when a man comes and takes a house from another he will pay the costs which the lessor incurs in connection with the preparation of the lease.

As to the various kinds of contracts, there are three—viz., contracts of record, contracts under seal, and simple contracts.

It is not necessary for me to deal with the first kind of contracts—contracts of record, e.g., judgments, recognisances—evidence of which is to be found on the files of the Court.

Contracts under seal are contracts made by deed which require a consideration. It is sometimes said that a contract under seal does not require any consideration. This is wrong; it requires a consideration, but a consideration is always implied when the contract is under seal.

With regard to simple contracts, these are sometimes called parol contracts. I used to think that parol contracts were limited to those constituted by word of mouth, and, as



a student, I was perplexed with the use of the term "parol contracts" when applied to written documents. A parol contract may be effected either by word of mouth or in writing, because a parol contract is synonymous with a simple contract; therefore parol contracts, or simple contracts, comprise that enormous class of contracts which are not the subject of an agreement under seal. They always depend on consideration—not an imaginary consideration but a real consideration. So you cannot have a simple contract without a real consideration to support it. Therefore, if there is something which purports to be a contract but no consideration exists, then, of course, there is no contract. Certain contracts require to be in writing—*e.g.*, bills of exchange, by the Bills of Exchange Act; assignments of copyright, by the Copyright Act; contracts of marine insurance, transfers of shares, contracts affected by the provisions of the Statute of Frauds and the Sale of Goods Act, 1893. Such contracts are required by statute law to be in writing in order that they may be enforced.

I desire to say a few words with reference to the Statute of Frauds, which was passed in the reign of Charles II. for the purpose of preventing fraud, by having evidence of certain contracts in writing. I venture to say that the Statute of Frauds has been the engine and instrument of more fraud than any other statute on the British statute book, yet nevertheless it is one of the most important statutes that exist affecting the dealings and transactions of common men in the ordinary details of life. Section 17 relates to the sale of goods. That has been repealed and re-enacted by Section 4 of the Sale of Goods Act, 1893.

Section 4 of the Statute of Frauds enacts that no action shall be brought:—

- (1) Upon a special promise by an executor or administrator to answer damages out of his own estate;
- (2) Upon any promise to answer for the debt, default, or miscarriage of another person (this is the ordinary contract of guarantee);
- (3) Upon an agreement made in consideration of marriage;
- (4) Upon a contract for the sale of lands or hereditaments or any interest in or concerning the same; and
- (5) Upon an agreement not to be performed within the space of one year from the making thereof.

No action can be brought upon any one of those five contracts unless there is a note or memorandum in writing signed by the party to be charged, or his agent. Therefore, if you have any of such contracts upon which you want to bring an action, unless there is a note or memorandum in writing of such contract signed by the party to be charged, not necessarily by you, because you are going to charge another person, no action can be brought. There may be a

perfectly valid contract at common law, but the Statute of Frauds requires as a condition precedent to an action that some note or memorandum shall exist in writing signed by the defendant. What has to appear in the note or memorandum? The names of both parties, the subject-matter of the contract, and the price. These, the Courts have said, are the requisites which must appear in the note or memorandum in writing. There is only one case in which it is not necessary for the consideration to appear—*viz.*, in the case of a guarantee. The Mercantile Law Amendment Act, 1856, provides that in the case of a guarantee the consideration need not appear in the memorandum, but, nevertheless, the same must exist. The consideration in the case of a guarantee is, generally, giving credit to another, or forbearing to sue another, but it need not appear on the face of the memorandum; but in all other cases affected by Section 4 of the Statute of Frauds the consideration must appear in the note or memorandum in writing. Of course, if the names of the parties appear in print that is sufficient. If a note containing the requisites comes into existence just before the action is commenced that is a sufficient compliance with the statute; and, therefore, if you want to bring an action against a person upon a contract within Section 4 of the Statute of Frauds, and there is no sufficient note or memorandum thereof in existence, before you start your action do something, adopt some course, pursue some course of action that will procure from the unfortunate man you desire to charge some note or memorandum in writing which will not permit him to avail himself of the defence afforded by Section 4 of the Statute of Frauds. It was thought if an executor promised to pay a debt owing by his deceased testator, that was sufficient to found an action upon; but the House of Lords said in the case of *Rann v. Hughes* (7 T.R. 350), "There must be some consideration for the promise," and, therefore, if there is no consideration coming to the executor or administrator, even although the promise to pay is in writing, it cannot be enforced, because one of the elements of a contract does not exist—*viz.*, the consideration. The Court does not go into the question of the adequacy of the consideration, as long as there is a real consideration that is sufficient to support the promise. So if you take a picture, for instance; the picture may be worth £100 and you say you will give a sovereign for it and I accept your offer: if I refuse to carry out my contract I cannot raise as a defence you have not given me an adequate price for the picture. You have given me a consideration when you were willing to give me a sovereign for it, and, therefore, whatever may be the value of the picture that is no defence, as long as there is a real consideration it is sufficient.

A past consideration will not support a subsequent promise—that is to say, supposing I had written an essay on "Contracts," and I came to you and said, "I have written

"an essay on 'Contracts' for you, I want my fee for doing 'it,' and you promise to pay me for the work done before the promise was made, that is a past consideration, and I could not maintain an action against you on that promise, because it is based upon a past consideration which will not support a subsequent promise. But there is one case in which a past consideration will support a subsequent promise, and that is where you can imply a precedent request; therefore, if you can imply a precedent request to do a thing, then in that case only will a past consideration support a subsequent promise. This is decided in the leading case of *Lampleigh v. Braithwaite* (1 S.L.C. 153). The well-known case of *Eastwood v. Kenyon* (11 A. & E. 438) is an authority for the principle that a moral obligation will not support a promise. The law does not deal with morals—morals have their place, but if the only obligation a man is under is a moral obligation that will not support a promise which is to be enforced in a Court of law, and, therefore, do not base any hopes of success in an action when the only support for your promise is a moral obligation. May I for one moment refer to Section 4 of the Sale of Goods Act, 1893? That, as I said, re-enacts Section 17 of the Statute of Frauds, and provides that a contract for the sale of any goods of the value of £10 or upwards cannot be enforced by action unless one of three things has happened:—

- (a) The buyer has accepted part of the goods so sold and actually received the same;
- (b) Given something in earnest to bind the contract, or in part payment;
- (c) Some note or memorandum in writing of the contract has been made and signed by the party to be charged, or his agent in that behalf.

In the case of a contract for the sale of goods of the value of £10 or upwards, unless one of these essentials exists you may have all the elements of a contract—a consideration, an offer, and an acceptance—but unless you comply with the requisites of Section 4 of the Sale of Goods Act you cannot succeed in an action for the price of the goods. Therefore always be sure, when you are concluding a purchase of goods of the value of £10 or upwards, that one of the alternatives given you by Section 4 of the Sale of Goods Act, 1893, is complied with by the other party.

I have only dealt with the outline of the subject of contracts. One could devote a whole evening to the decisions on Section 4 of the Statute of Frauds or Section 4 of the Sale of Goods Act, 1893. If, however, I have only gone through the elements of the law affecting contracts, I can only hope that I have given you some information; that something of what I have said will remain with you to help you when the time comes to go in for your examinations; and, most important of all, that you may remember something that will be of assistance to you in your subsequent professional careers.

## Birmingham Chartered Accountant Students' Society.

A DEBATE was held on the 13th inst., at the Library, 8 Newhall Street, Mr. James Rhodes, in the absence of Mr. G. C. T. Parsons, in the chair. There were 31 members present. The subject for discussion was, "That the Acts relating to income-tax as they are at present administered, and the methods adopted in assessing and collecting the tax, should be drastically amended."

The following gentlemen opened:—

Affirmative: Messrs. C. Braden Allen, A.C.A., E. P. Major, A.C.A., and R. H. Johnston.

Negative: Messrs. J. Edgar Jordan, A.C.A., G. W. Odell, and H. S. Ward.

The following gentlemen also spoke:—Messrs. W. H. Lovatt, A.C.A., A. C. Ridgway, A.C.A., R. Graham Squiers, and W. H. Castle.

The moot point was defeated by 16 to 12.

The meeting terminated with a hearty vote of thanks to the Chairman for presiding.

## Investigation of Public Utilities.

THE Committee on Public Ownership of the National Civic Federation, which has its headquarters in New York, has got a most important work on hand. This Committee is at the present time making investigations of various public utilities, including Gas, Electric Light, Water, and Street Railways, and its conclusions will be quoted broadcast after the publication of the reports prepared from the useful amount of knowledge and statistics which the Committee will be able to gather.

The Committee, understanding the necessity of qualified investigators so far as pertains to the accounts, engaged Messrs. Marwick, Mitchell & Co., Chartered Accountants, of New York and elsewhere, to act for them in these matters. The work was started some time ago, and the Committee prepared full and elaborate schedules of questions pertaining to the various plants, and these were drawn up on such lines that comparisons are readily made.

Many of the plants to be investigated are at the present time owned by municipalities, but the Committee is also arranging to have their examinations extended to those operated by private concerns. These examinations are not confined to the United States only, but include Europe.

### Personal.

MR. JOHN ALBERT DEAKIN HALE, A.C.A., announces that he has commenced practice at 14 Finsbury Circus, London, E.C., and 5 Warrior Square, Southend-on-Sea, under the style of DEAKIN HALE & Co. Mr. HALE became a member of the Institute in 1891, and was for many years with Messrs. J. R. ELLERMAN & Co.

MR. WILFRID CANNON, A.C.A., of 15 Cophall Avenue, E.C., has opened a branch office at 8 High Street, Erith, Kent.

MR. J. A. HEATON, A.C.A., and Mr. B. H. STRIDE, A.C.A., have commenced practice as Chartered Accountants at 18 and 19 Ironmonger Lane, E.C., under the style of HEATON, STRIDE & Co.

MR. T. MORRIS ATTLEE, Chartered Accountant, of 114 Edmund Street, Birmingham, announces that he has taken into partnership Mr. ROBERT BEASLEY EDGE, A.C.A., who was articled with him, and has been with him for the last 15 years. The style of the firm in future will be ATTLEE, EDGE & Co.

### Meetings for the ensuing Week.

**Monday** — INSTITUTE OF CHARTERED ACCOUNTANTS.— Investigation Committee, at 3 p.m.

MANCHESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Short Papers. "Points in Company Practice," by Mr. W. O. Buxton and Mr. A. F. Rountree.

**Tuesday** — INSTITUTE OF CHARTERED ACCOUNTANTS.— General Purposes Committee, at 3 p.m.

BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Lecture, "Debentures," by Mr. Edward Evershed, B.A. This meeting will be preceded by tea, at 6 o'clock, at the Library, 8 Newhall Street.

**Wednesday**—LONDON CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Lecture, "Parliamentary Companies," by Mr. F. N. Keen, LL.D., A.C.A., at the Hall of the Institute, Moorgate Place, E.C.; 6 p.m.

**Thursday**—LIVERPOOL CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.—Lecture, "Preparation of a Statement of Affairs for a Creditor's Meeting," by Mr. B. Howarth, F.C.A., at the Library, 3 Lord Street; 6 p.m.

LEICESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Sureties," by Mr. Tinsley

Lindley, LL.D., at Winchester House, 1 Welford Road; 7 p.m.

SHEFFIELD CHARTERED ACCOUNTANTS STUDENTS SOCIETY.—Lecture, "Some Points on the Duties of a Trustee in Bankruptcy," by Mr. A. F. H. Harrop, Solicitor, at the Library, Hoole's Chambers, Bank Street: 6.45 p.m.

### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Mar. 16th, was 186, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 100; Deeds of Arrangement registered, 86. The respective numbers in the corresponding week of last year were: Bankruptcies, 109; Deeds of Arrangement, 104—total, 213; being a decrease of 27. The total number of commercial failures recorded during the 11 weeks of the present year is 1,881; the total number recorded in the corresponding 11 weeks of last year was 2,053, showing a decrease of 172.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Mar. 16th, was 166. The number in the corresponding week of last year was 179, showing a decrease of 13. The total number filed during the 11 weeks of the present year is 1,742; the total number filed in the corresponding 11 weeks of last year was 1,887, showing a decrease of 145.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Mar. 16th, amounted to £393,692, by way of addition to £1,565,889, previously issued by the same companies. The amount registered in the corresponding week of last year was £2,591,117, showing a decrease of £2,197,425. The total amount registered during the 11 weeks of the present year was £15,286,018 (in addition to the issues in previous years by the same companies), as compared with £20,245,372 for the corresponding 11 weeks in 1905, showing a decrease of £4,959,354.

## The Profession in Scotland.

### Glasgow Chartered Accountants Students' Society.

#### Reconstructions.

BY GEORGE ALEXANDER TOUCH, C.A.

A LECTURE delivered to the members of the above Society on 22nd February 1906.

#### PART I.—THE SUBJECT GENERALLY CONSIDERED.

##### I.—*The Choice of a Subject.*

When the Committee of the Glasgow Chartered Accountants Students' Society invited me to deliver a lecture to its members during the current session, they gave me full liberty of choice with regard to the selection of a subject. I hope the subject which I have chosen, that of the Reconstruction of Companies Incorporated under the Limited Liability Acts, will meet with your approval. I cannot claim for it that it offers any attraction except to those who have come here for the sole purpose of study, undismayed by the absence of all those features that ordinarily make for popular interest in a lecture. You will find no gems of anecdote, no flowers culled from the gardens of your favourite poets, to give colour and variety to the level plains of my discourse. The only quotations which I shall have to offer will be from Acts of Parliament or the utterances of the Judicial Bench, neither of them sources to which it is customary to go for attractive literary gleanings. But although I can only promise you some dry observations on a prosaic question, I do not hesitate to invite your close attention to them. The subject of Reconstructions is well worthy of your study, as it represents a branch of the work of our profession which is of increasing importance and usefulness, and I am informed by your Secretary, Mr. MacEachern, whose absence to-night, through illness, I much regret, that it has not been dealt with previously before your Society.

As my business is chiefly in London, where, as is natural in the great financial centre of the Empire (I think I may call it so, even in Glasgow), company activity is greatest, I have not been without opportunities of being concerned in the preparation of important schemes of Reconstruction, and I shall be glad if any little experience I may possess is of some value to the students of our profession.

##### II.—*The Chartered Accountant as Company Adviser.*

The enormous growth of the application of the joint-stock principle, owing to the necessity for conducting businesses

on a large scale in order to enable them to hold their own in the fierce competition which exists in home and foreign markets alike, makes it important for Chartered Accountants to be equipped with the fullest knowledge of matters relating to all the phases through which companies may pass.

Companies, like human beings, require constant attention and the application of professional skill. Chartered Accountants are their medical advisers, but without the limitations of the medical profession. No surgeon has yet been able to take two or more crippled bodies, and, by consolidation, to make a single strong one out of them. But that is what we often do with companies. Sometimes, too, we find it best to put our patients out of pain, but there we claim no monopoly.

It may be taken as an accepted fact that, if the business of a company is not conducted with financial ability, there is little prospect of its ultimate and lasting success. The whole training of a Chartered Accountant eminently fits him for the post of practical adviser and administrator, and a great many languishing businesses might have been kept in vigour, a great many of the failures of the past might have been averted, if some competent member of the accountancy profession had been consulted at the proper time.

I am glad to say that the usefulness of our profession in this respect is becoming more widely recognised. Each year sees a widening of the practice of retaining the services of accountants, not merely for the purposes of the annual audit, but as permanent business and financial advisers, to the advantage and benefit of the interests concerned.

It is not, however, within the scope of this lecture, nor would time permit me, to make more than a passing reference to the general duties of an accountant when acting as financial adviser to a company, or in connection with its incorporation, and general and current administration. My remarks will be directed chiefly to those cases where the intervention of the accountant is sought in consequence of the need for some vital changes having become manifest.

The Board of Trade Returns, year by year, tell the same melancholy tale of companies which had become involved in financial difficulties, and had ultimately succumbed and been liquidated. Many of these liquidations were inevitable; the concerns were always, or had long been, "past praying for." Others were avoidable if proper knowledge and care had been exercised before they, too, became past praying for. Time and again I have known of instances where, by taking the business in hand at the proper time, and giving it vigorous treatment in the Chartered Accountants' surgery, involving perhaps an entire reconstruction, perhaps only the removal of a few dead limbs or other atrophied parts, the company has been able to survive the

period of financial stress, and has ultimately recovered its prosperity to the benefit of creditors and proprietors alike.

It is in this connection that the services of the profession may be of the utmost value. When the Chartered Accountant is invited to advise, he should endeavour, by a strict investigation of the accounts and business, and of all the circumstances surrounding and affecting the trading, to diagnose the chief cause or causes of the difficulties which have arisen. It is in this skill for diagnosis that his greatest usefulness lies. For it is worse than useless to attempt to effect a cure before the cause of the indisposition is ascertained. Do not jump to conclusions, to the neglect of careful observation and patient investigation, or the death of your patient may lie at your door.

### III.—*The Causes which render Reconstruction Necessary.*

#### I.—*Extensions, Amalgamations, &c.*

It would be a mistake to suppose that all reconstructions have their origin in misfortune.

It is often necessary to reconstruct a company because its growth and prosperity demand an extension of capital. The object in view may be merely the introduction of further working capital, or it may be the rearrangement, perhaps even the duplication, of the existing capital, so as to bring it into better correspondence with the magnitude and importance to which the company's business has attained.

Companies are frequently reconstructed so as to effect an amalgamation with, or the absorption of, another business.

In special circumstances a company may be reconstructed in order to get rid of an uncalled liability on the shares, where its continuance is not required, and difficulties may exist in the way of dealing with it by reduction of capital.

It occasionally happens that a company is reconstituted so as to increase the powers contained in the memorandum of association, but, as a rule, the memorandum of association is so widely drawn that a reconstruction for this purpose is seldom necessary.

#### (II.) *Misfortune.*

Although misfortune is thus not the only cause of reconstruction, it undoubtedly accounts for more cases than all the others put together. Some reference may therefore be made to the factors which are chiefly responsible for placing a company in a position of financial difficulty which may lead to eventual bankruptcy and liquidation, if the position is not saved by reconstruction and administrative reform. The principal factors are:—

- (a) Initial errors in the capitalisation and formation of the company.
- (b) Errors in administrative policy and incompetence in management.
- (c) The effect of competition.

#### (a) *Initial Errors.*

The errors at the commencement of a company's career are usually (1) over-capitalisation, and (2) the insufficient provision of working capital.

The first error affects the investor in the securities of the company more than the company itself, and usually results from the greed of the vendor or the interested enthusiasm of the promoter. Owing to the lack of proportion between the capital and the reasonable average earning power of the company, it is unable to pay the return on its shares which was originally anticipated, and they become depreciated in value.

This may occur without affecting the company's position and credit, but it more often causes a restriction of credit and a consequent loss of trade. It also tempts directors into making a full distribution of profits so as to show a return on the inflated capital, when it would be prudent to put something to reserve, or to make ampler provision for depreciation and contingencies.

The second error, that of providing insufficient working capital, often burdens the company from its birth with a load of debt which may, in time, cause its downfall. If, therefore, you are consulted professionally at the formation of a company, you should see to it that the working capital to be provided is sufficient to cover all the reasonable demands of the anticipated trading, with a margin for extras.

The investor now enjoys a little more protection than formerly against the risk of joining companies which have sinned in these respects. The provisions of the Act of 1900 make it necessary that the prospectus should contain a full disclosure of the amount payable to each of the vendors (whose names and addresses must also be given); whether such payment be in cash or securities, specifying the amount payable for goodwill; the amount paid or intended to be paid to any promoter and for underwriting the subscription to the company's capital; the amount or estimated amount of the preliminary expenses; and the minimum subscription on which the directors will proceed to allotment. The intending investor is therefore able to see, amongst other things, what amount of working capital is provided to carry on the business, although, even if he be a Glasgow accountant, it is not always possible for him to form a reliable opinion as to its sufficiency for the company's needs.

#### (b) *Errors of Administration.*

Errors in the administrative policy and in the management are fruitful sources of the evils which beset a company's existence. They are sometimes due to the fact that the boards of directors of new companies often consist of gentlemen possessed of real ability and distinction in other walks of life, but with no special experience or knowledge

of the business which they undertake to direct. They are thus unable to take advantage of the best opportunities or methods, and although full of zeal and actuated by a single-minded desire to be good and faithful servants, their errors of judgment and sins of omission may result in crippling the resources of the concern. In the course of our professional experience we nearly all come across some instances of this sort.

The want of individualism in company trading is a serious and prejudicial factor. It is a wise policy, where possible, to entrust the control to some person or committee possessed of special knowledge or training in the business of the company, and who can to a large extent identify themselves and their personalities with the enterprise. The general policy should, of course, be decided by a board of directors; but, so far as the employees and customers of a business are concerned, a board has much of the remoteness of a Muscovite autocracy, and in matters of executive administration the managing director or a working committee should be given full control.

#### (c) *Competition.*

Competition may act on a company's business in a number of ways. Its aspects are too numerous to be dealt with comprehensively to-night. Businesses in this country are exposed to the competition of all the world. The lifetime of the youngest student present has witnessed enormous changes in the conditions of manufacture and in the development of new centres of production. Markets, which a few years ago were open to our manufacturers, have been closed. Driven from the manufacture of goods for export to countries which are now protected, the competition has been quickened in the manufacture of goods for home and neutral markets.

All this may make for cheapness, temporary or permanent. It may be a good or a bad thing for the country. I do not here express any opinion on the fiscal system under which those conditions prevail. I merely record the fact that the shifting of centres of manufacture, the migrations of industry, and the increase of home and foreign competition, are fruitful causes of the decline and failure of individual enterprises.

There are cases where it may be possible to remedy the adverse effects of competition, and, by meeting it in the right way, to restore a business to prosperity. Conditions vary with nearly every industry and business, and each must be closely studied before a proper judgment can be arrived at.

#### IV.—*The Duties of the Accountant.*

##### (1) *In Relation to the Business.*

Too often the Chartered Accountant does not arrive on the scene until the position of the company has become

critical, owing to one or other of the causes which I have outlined. It may then be too late to reconstruct and save the business. For a long time the practice prevailed of only sending for the Chartered Accountant when it was decided to appoint a liquidator. As well might a sick man put off sending for the physician until the near approach of the hour when there would be need only for the services of an executor.

It should always be the aim of members of the profession, when they are consulted on matters of this nature, to locate the reason for the difficulties which have arisen, and, if these can be overcome, to devote their energies to that end. *The preservation of value should be their constant care.* It may well be that a good business, which has been badly managed, might again be placed on a profit-earning basis, although unable to make returns on the capital originally created. Even when it seems, on the surface, as if the time for help is passed, and that a realisation of the assets under liquidation proceedings is the only available course, it may be found possible, after thorough study and investigation, to formulate some scheme of rearrangement or reconstruction, which, combined with new and progressive management, and probably the provision of some additional cash capital, may yet restore the company to a good position.

##### (2) *In Relation to the Solicitors.*

I now propose to touch on the legal points in connection with schemes of reconstruction, and the respective relations of accountants and solicitors in connection therewith.

Reconstructions and rearrangements are carried out under statutory rules and regulations, and they have been the subject of so many judgments of the Courts that it may appear to some of you, in view of the numerous legal points involved, that they furnish business for lawyers rather than for accountants.

In England the line of demarcation between lawyers and Chartered Accountants is more clearly marked than in Scotland, where those who would become Chartered Accountants have to attend law classes at the University, in addition to a comprehensive general training in accountancy and actuarial science. The Scottish Chartered Accountants are regarded as closely allied to the legal profession. Unlike their English brethren, they are included in the Law List, and they fulfil some duties which in England would be entrusted to solicitors.

There need be no clashing of interest, or confusion of duties, between the work of the accountant and the solicitor. The duty of framing a scheme of reconstruction, so far as the financial and business elements are concerned, falls within the sphere of the Chartered Accountant, and

there is also considerable scope for the services of our profession in explaining its provisions to those to whom it has to be submitted for approval or adoption, and in the executive work of giving effect to it after it has been adopted.

The machinery used in carrying through a scheme of reconstruction is necessarily of a legal nature, and should always be directed by skilled legal practitioners. But it is essential that the accountant should have a working knowledge of this legal machinery; so, before dealing further with the general or commercial aspect, which chiefly concerns him, I will now briefly review the requirements of the Companies Acts as regards reconstructions.

#### V.—*The Machinery Provided by Law.*

The machinery under which reconstructions and rearrangements are chiefly effected is provided by:—

- (a) Sections 95 and 161 of the Companies Act of 1862.
- (b) The Joint Stock Companies Arrangement Act of 1870.
- (c) The last-mentioned Act, and Section 24 of the Companies Act of 1900, jointly.

Another method is by a sale of the undertaking of a company, under powers in the memorandum of association, for payment, or part payment, in shares in a new company.

It is also possible to effect a reconstruction or rearrangement of a company's capital by special Act of Parliament, or by the consent of all parties interested. This last method—namely, by universal consent—although perfectly legal and effectual if found practicable, is seldom resorted to, because of the almost insurmountable difficulties in the way of obtaining the unanimous consent of all concerned, even if they are all of Scottish nationality.

In some cases reconstructions of a sort, which, however, can be better described as alterations of a company's form of constitution, are possible under the Companies (Memorandum of Association) Act, 1890. The procedure there is by a special resolution, and the sanction of the Court. The Court has power to confirm, either wholly or in part, any alteration with respect to the objects of the company which may be required in order to enable it to do any of the following things:—

- (a) To carry on its business more economically or more efficiently.
- (b) To attain its main purpose by new or improved means
- (c) To enlarge or change the local area of its operations.
- (d) To carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company.

- (e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

It is only very rarely that a company finds it necessary to resort to the Companies (Memorandum of Association) Act, 1890, because, as a rule, the memorandum of association is drawn with sufficient wideness to cover all probable contingencies.

The statutory provisions to which it is most important to direct your attention are those contained in the 1862, the 1870, and the 1900 Acts, and I shall have something to say concerning each of these.

#### (1) *Section 161 of the Companies Act, 1862.*

First and foremost comes the well-known 161st Section of the Act of 1862. Any company incorporated under the Companies Acts may be reconstructed under Section 161 of the 1862 Act. For this purpose a winding-up of the original company is necessary. Any company constituted under special Act of Parliament, Charter, or otherwise, which is capable of registration under the Act of 1862, by virtue of Sections 179 and 180, may also so register itself for the purpose of going into voluntary liquidation and taking advantage of the 161st Section.

Although that section relates only to a purely voluntary winding-up, a sale of the property can be made under Section 95 in cases where the matter is before the Court either under a supervision order or a compulsory order, and all things necessary may be done under that section, and to such a sale the principles embodied in the 161st section are applicable. It should, perhaps, be mentioned that a reconstruction almost invariably takes the form of a sale of the business and undertaking of the original company under conditions which substitute securities and shares of the new company for those of the old.

It will therefore be seen that the rules laid down in the 161st Section can be applied to any company in liquidation, and, for all practical purposes, that section may be regarded as the Charter of Reconstruction.

The general effect of Section 161 is summed up and explained in the following remarks of the late Sir George Jessel, Master of the Rolls:—

"I think the meaning of the 161st Section, stated broadly, was this, that instead of disposing of the assets of the company wound up under voluntary winding-up for money, you may dispose of them for shares in any other company; or policies, or any like interest, or future profits or other benefit from the purchasing company; but that whatever the benefit was, in whatever shape it was taken, it was to be given or paid or handed over to the liquidators for the benefit of the contributories, if I may call them so, of

the company wound up—of course subject to the payment of their debts; and that there was no authority conferred by the Act of Parliament on the general meeting, or rather the statutory majority, to direct a distribution as between those contributories otherwise than according to their rights *inter se*." (*Griffith v. Paget*, 5 Ch.D. 894, 898.)

The position to which this brings us, shortly expressed, is, therefore, that Section 161 of the Act of 1862 enables a company, by its liquidator, to sell its undertaking for shares in another company, but the distribution of the proceeds of the sale is to be governed by the respective rights of the creditors and contributories.

It will be observed that the section contemplates a sale to another company only, and, therefore, an agreement providing for the transfer or sale of the business of a company to an individual (even though he may intend to form a company to take over the business) would not be upheld by the Court, because the section does not authorise a sale to an individual. Consequently an agreement purporting to provide for such a sale would be invalid. It has, however, been held that an agreement to sell to an agent for a company about to be incorporated may be within the terms of the section, but such an agreement is not one which can be recommended. (*Hester & Co.*, 44 L.J. Ch. 757.)

In a case of reconstruction proceeding under the above section, the claims of the creditors are usually provided for in cash, or the liability for them is taken over by the new company. In the latter case the constitution of the new company should provide funds to meet these claims on demand, because it does not follow that the creditor will agree to a novation of contract by the substitution of one debtor for another, and he may proceed for recovery of the amount due. The creditor's remedy, if the sale has been made in a voluntary winding-up under this section, is to apply to the Court for a supervision order or a compulsory order.

It has been shown that the rights of the contributories *inter se* govern the distribution of the purchase-price received by the liquidator and available for division after payment of the creditor's claims. This position of things has very often caused serious differences of opinion. Holders of shares entitled to a preferential return of capital in a liquidation may force a realisation of the purchase-price received in specie in order to satisfy their claims. This, of course, may prove detrimental to the holders of shares of a lower rank. If, however, the articles of association of the company contain the customary provisions as to "class meetings" (i.e., meetings of the different classes of shareholders empowered, by a prescribed majority, to sanction any particular transaction

on behalf of the class), and such meetings are held, and the requisite majorities approve of a certain scheme or method of distribution amongst the proprietors, then the arrangement is binding on all classes, although such approval does not necessarily deprive the minority of the right of dissenting from the sale given by the section.

If the articles of association, as originally registered, do not contain the necessary, or sufficiently wide, provisions as to class meetings, such provisions may be added by special resolution unless prohibited by the memorandum of association.

#### (2) *Rights of Dissident Shareholders.*

This may be a convenient point at which to say a few words about the rights of dissentients. The procedure of the dissentient is governed by Sections 161 and 162 of the Act of 1862. Should he disapprove of the sale, and desire to separate himself from the general body of his co-proprietors, his method is clearly defined. He must express his dissent in writing, addressed to the liquidator, and leave the notice of dissent at the registered offices of the company not later than seven days after the meeting confirming the resolution for sale, and he must require the liquidator to adopt, at his option, one of the alternatives mentioned in the section. The alternatives are that the liquidator shall thereupon either abstain from proceeding with the sale, or shall purchase the interest of such dissentient.

It will be observed that the section states that the notice of dissent must be left at the registered offices of the company. As it very often happens that the liquidator carries on business at another address, this should be carefully noted, because it might be held that, unless the notice of dissent was left at the registered offices of the company, it was irregular. This mistake has been made even by people who are ordinarily supposed to be very wide awake.

The notice of dissent will be held to be irregular unless it specifically requires the liquidator to adopt one or other of the alternatives mentioned, and it should also be noted that it must be lodged within seven days of the meeting confirming the sale, although it has been held that notice of dissent served within seven days of the first meeting, if not withdrawn or returned, is valid.

As the liquidator has, by this time, ascertained that the general body of shareholders are in favour of the sale, he will ordinarily, on receiving the notice of dissent, provide for the alternative of purchasing the interest of the dissentient. The value of the dissentient interest is fixed by arbitration. Unless both parties concur in the appointment of a single arbitrator, the rule of procedure is that each party shall, on the request of the other, appoint an arbitrator. If, for a period of fourteen days after the



service of such request, either party fails to appoint an arbitrator, then the other party, having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and the award of the single arbitrator is final.

The arbitrator, or arbitrators, proceed to assess the value of the dissentient's holding in the company. Such value is not by any means necessarily determined by the amount of the purchase-price to be paid on the proposed sale of the company's assets and undertaking. The value to be settled is the value of the holding of the dissentient member in the company in liquidation, on the assumption that the sale proposed had not been carried out, and any evidence bearing on this question can be submitted to the arbitrators by either the dissentient or the liquidator.

Where the liquidator expects that there will be some dissentients to the sale, it is as well to provide in the scheme of reconstruction for a cash fund, out of which such dissentient interests can be purchased, although he may sometimes be able to realise the shares in the new company applicable to such dissentient members at a price which will enable him to meet these claims in full. This, however, is seldom the case.

Articles of association occasionally provide that the rights of dissentients shall be limited to a claim to have these shares realised on their behalf and the proceeds paid to them. Such provisions may occasionally have the effect of deterring shareholders from taking action, but I think it is now pretty generally known that they have no legal effect whatever.

The assessment of the value of the dissentient holdings necessarily takes time, and, if the proceedings are unduly prolonged, considerable expense may be incurred and the object of the reconstruction may be defeated. I once had the misfortune to act as arbitrator in a case where the hearing extended over a long period, and much expert evidence was called on either side, until at length both parties took fright at the costs which were being incurred, and, after much expense, came to terms. Notices of dissent are common in liquidations, but it is comparatively rarely that the machinery of arbitration becomes necessary. An offer is generally made and accepted, after some negotiation. An arbitration may prove a costly luxury for either side.

### (3) *The Joint Stock Companies Arrangement Act, 1870.*

The difficulties of procedure under Section 161 of the 1862 Act are considerable, but these were decidedly more numerous before the passing of the Arrangement Act of 1870. By the passing of this Act it became possible in a liquidation, whether voluntary or otherwise, to bind all classes of creditors to a scheme of arrangement by the

vote of the necessary majority of each class. The 1870 Act provides that:—

(Section 2) "Where any compromise or arrangement shall be proposed between a company which is in the course of being wound up, either voluntarily or by or under the supervision of the Court under the Companies Acts, 1862 and 1867, or either of them, *and* the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, *if sanctioned by an order of the Court*, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company."

(Section 3) "The word 'company' in the Act means any company liable to be wound up under the Companies Act, 1862."

(Section 4) "The Act shall be read and construed as part of the Companies Act, 1862."

It will therefore be seen that the Arrangement Act of 1870 was an important advance on, and a necessary adjunct to, the 161st Section of the 1862 Act, because it took away from any isolated creditor with a grievance, legitimate or otherwise, the power to prevent or delay a scheme of reconstruction. It also deprived an ill-conditioned creditor of the power of trading on the wish of the general body of creditors who favoured a desirable scheme, in such a way as to obtain some undue advantage for himself. Although one of the shortest of the Companies Acts—it is limited to four sections—it has proved one of the most useful.

This Act does not, however, apply to the Colonial creditors of a company carrying on business in a Colony. It has been held that a Colonial creditor can enforce a debt due to him by the company, as against the assets of the company in the Colony, by taking proceedings in such Colony, and that a scheme of arrangement duly passed in the Courts of the United Kingdom does not constitute a good defence to such proceedings. (*New Zealand Loan & Mercantile Agency v. Morrison*, 1898, A.C. 349.)

### (4) *The Companies Act, 1900.*

The Companies Arrangement Act of 1870 enormously facilitated the work of reconstruction where the claims of

debenture-holders and other creditors had to be dealt with. But it was not until thirty years later that the difficulties as regards the rights of shareholders were overcome, when the Companies Act, 1900, came into force. Under that Act (Section 24) the provisions of Section 2 of the Arrangement Act of 1870, which hitherto had applied only to creditors, were made applicable to shareholders also. This extension of the principle of the 1870 Act greatly facilitated the division of assets and specie among shareholders, and has already enabled many desirable schemes to be carried into effect.

But there is one thing which the Chartered Accountant must never forget when framing a scheme for adoption under these provisions. It is this: the scheme must be one which the Court will approve; for every scheme under the 1870 Act depends for its validity on the sanction of the Court.

This sanction is applied for on petition. The first step is to obtain the direction of the Court to hold meetings of the classes to which the scheme is to be submitted. When these meetings have been held a report is made upon what took place, and if the scheme received the support of the majorities prescribed by the Act, the petition is presented to the Court praying for its sanction.

It is essential, therefore, in the preparation of any scheme under the Act, to keep in view the principles upon which the Court proceeds. This subject has been stated so lucidly and clearly in the invaluable work of Mr. Justice Buckley that I cannot do better than quote his concise statement summarising the decisions of the Courts on this most important point. In "Buckley on the Companies Acts" eighth edition, 1902, p. 670, under the title "Functions of the Court," the following observations are made:—

"In exercising its power of sanction the Court will see, first, that the provisions of the statute have been complied with; secondly, that the class was fairly represented by those who attended the meeting, and that the statutory majority are acting *bond fide*, and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and thirdly, that the arrangement is such as a man of business would reasonably approve.

The Court does not sit merely to see that the majority are acting *bond fide* and thereupon to register the decision of the meeting, but, at the same time, the Court will be slow to differ from the meeting, unless either the creditors have not been properly consulted or the meeting has not considered the matter with a view to the interests of the class which it is empowered to bind, or some blot is found in the scheme."

One of the early cases under the Joint Stock Companies Arrangement Act of 1870, as extended by the Act of 1900, was dealt with by Mr. Justice Buckley, who sanctioned a scheme for the reconstruction of Paterson, Laing & Bruce,

Lim., authorising me, as liquidator, to divide securities to the amount of £525,000 among the holders of debentures, preference and ordinary shares, and decided that certain contributories who were asking the Court, as a term of sanctioning the scheme, to confer on them the rights of dissentients under the 161st Section of the 1862 Act, were not entitled to such rights. One of the grounds of such refusal was that the sale, which took place as part of a scheme of reconstruction to provide for an extension and rearrangement of capital consequent on the purchase and absorption of another large business, had been authorised by the company prior to the date of the winding-up, so that the liquidator was deprived of one of the alternatives given to him under the 161st Section—namely, the right to abandon the sale, and it would, therefore, have been unreasonable to give the dissentients the benefit of the other alternative.

It has been suggested that the Act has the effect of enabling such arrangements as are contemplated by the 1870 Act to be made binding on shareholders, without the necessity of placing the company in liquidation. This view is interesting. If it holds good, it may be possible also for a company to effect an arrangement with its preference shareholders under which all members of the class might be bound to accept, say, ordinary shares to an amount differing from, and perhaps less than, their preference holdings. It might, however, need some eloquence to persuade the necessary majority to consent, and the arrangement would require the sanction of the Court.

It may be well to mention that, with regard to life assurance companies, the Legislature thought it necessary, owing to the special nature of their business, to make special statutory provisions, by the Life Assurance Companies Acts of 1870 and 1872, for the amalgamation and reconstruction of such companies.

##### (5) *Power of Sale in Memorandum and Articles.*

It is now usual to take power in the memorandum and articles of association of a company to sell the undertaking and assets of the company for shares in another company, and this power is often given to the directors under the articles of association. Where this power is included in the memorandum of the company, and a reconstruction is considered necessary for the purpose of amalgamating with other interests, a great deal of time and difficulty is saved by carrying through a sale under the power so provided. The sale is usually authorised by a resolution of the shareholders, which is not necessarily a special resolution—that will depend on the provisions contained in the articles of association. When the sale has been carried through, and the shares of the new company have been received, the company can then pass resolutions placing itself in voluntary

liquidation for the purpose of distributing the purchase consideration among the shareholders.

When a reconstruction is carried through in this way, the various classes of shareholders should be bound by the resolutions of class meetings to a certain definite scheme of distribution. As the sale has been made, and the scheme of distribution agreed to, before the company went into liquidation, the rights of a dissentient, as set forth in Section 161 of the 1862 Act, do not apply, and if such dissentient does not accept his rateable distribution of shares, he forfeits all further interest in the company. This is a very useful method of procedure, and it enables the reconstruction to be completed in the minimum of time. It should be borne in mind, however, that you cannot force a contributory to take up a share in a new company carrying a liability for unpaid capital.

And here let me express satisfaction that the old method of allowing liquidations to run on year after year, although still sometimes unavoidable in special circumstances, is contrary to the spirit and practice of the day. When the time comes, as it doubtless will, for you to deal with important liquidations, do not endeavour to make an annuity out of them. Take no pride in having had a business of that nature in your office for a long time. Deal with it promptly. Get rid of it as speedily as possible, and be ready for the next thing. It will pay you best in the end. Once you acquire the right kind of reputation, your difficulty will be, not to find business to do, but to find time to do the business that is thrust upon you. That, I gather from the pleasant sounds that reach my ear as I speak, is your great trouble in Glasgow.

(To be continued.)

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### Bank Rate of Discount.

April 14th 1904 .. .. .	1%
„ 21st „ .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th „ .. .. .	3%
„ 28th „ .. .. .	4%

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## Leading Articles.

Brewery and Bottled Beer Accounts  
and Audits.

THE lecture recently delivered by Mr. HERBERT LANHAM, A.C.A., at a meeting of the Newcastle Chartered Accountants Students' Society on "Brewery and Bottled Beer Accounts and Audits," which was reported in our issue of the 10th ult., is one of general interest, especially in view of the fact that a work upon this same subject by Mr. LANHAM has been announced in connection with "The Accountants' Library" Series, and may be shortly expected.

The present lecture, however, can hardly be said to discount the value of the as yet unpublished handbook, in that, dealing as it does with the subject in general terms within the necessary time limits of a lecture, and without the aid of *pro forma* rulings, it is

chiefly of value as arousing the interest of the student in this important subject rather than on account of the actual information it conveys. It is pointed out that as at present conducted the business of any ordinary brewery is a many-sided one, comprising in addition to the manufacturing business of brewing—which is, of course, the backbone of the whole undertaking—a wholesale trader's business in a number of different other commodities, and a financier's business as well. It is, of course, of the utmost importance that the results of each of these separate departments should be clearly shown. Hence the accounts must of necessity be somewhat complicated. Their complexity is, moreover, heightened by the fact that it is desirable that the results of the manufacture of malt should be stated separately from the results of the making of beer, and the accounts thus afford an example of a manufacture within a manufacture which rarely obtains save in connection with chemical industries. From one point of view, however, a brewery may, of course, be said to come under the same category, more particularly of latter years.

There is much, of course, in Mr. LANHAM's paper which, owing to the omission of forms, is not likely to be very clear to the novice. He will, however, doubtless have observed that here, as with all other manufacturing businesses, successful results are to a very large extent dependent upon adequate accounts, and especially upon suitable Stock Accounts and Cost Accounts. With regard to the first-named some very useful suggestions are provided, but upon the subject of Cost Accounts something might, we think, have been added with advantage.

Turning to the financial aspect of the matter, it is perhaps to be regretted that Mr. LANHAM could find no space to deal with the interesting, and as yet novel, subject of Compensation, and its treatment in accounts. This omission will, however, doubtless be supplied in the forthcoming handbook. On the subject of Tied Houses, the somewhat obvious moral to be drawn from the present depreciated state of most brewery securities seems to be that a successful brewer is by no means necessarily a clever financier, and that these undertakings have suffered in no small degree from having been started with a larger amount of capital than could be usefully employed in ways that the directorate were competent to undertake. The subject is, of course, an extremely interesting one, and the lecturer only touches the fringe of it in his paper. Many lectures are, however, at least as valuable on account of what they suggest as by reason of the definite information that they impart, and, judged from this standpoint, the one now before us attains a very high level.

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#### Reconstructions and Dissentients.

---

THE recent decision of Mr. Justice KEKEWICH in *Bisgood v. Nile Valley Company, Lim.*, will be welcomed by all who are interested in the finances of joint-stock companies being administered upon lines that are unquestionably sound. There has for too many years past been an unfortunate and somewhat increasing tendency to keep alive companies which have failed beyond any reasonable prospect of eventual success by the expedient of periodically reconstructing. We have, of course, nothing whatever to say against the

process of reconstruction *per se* as a means of equitably arranging for the continuance of an undertaking which has outgrown the limitations of its original memorandum of association upon lines which as nearly as possible conserve existing interests. Such reconstructions provide a most useful means of selling a small undertaking to a large one, without at the same time crowding out the small holder upon altogether inadequate and inequitable terms. But, just because they represent the necessary rearrangement of the finances of a successful company, such reconstructions are, in the nature of things, comparatively rare.

A far more usual form of reconstruction, and indeed that in connection with which the term reconstruction is now generally identified, occurs where, the working capital originally available having been exhausted, it becomes necessary either to shut down, or to obtain further capital in order to continue. In such cases there would, in the vast majority of cases, be no available assets in the event of a shutting down, inasmuch as future prospects represent the sole available asset, and they in the nature of things have little or no realisable value. In such cases reconstruction provides a most convenient means of keeping the undertaking alive to such an extent as is represented by the continuance of the fees of directors, secretary, &c., while at the same time decently burying the original company, and thus effectively disposing of any possible risk of an inquiry into the conduct of anyone connected with the promotion of that ill-starred undertaking. No unprejudiced outsider perhaps would put a single shilling into so unpromising a concern, but experience has shown that by means of a reconstruction a considerable proportion at least of the existing holders can usually be

relied upon to throw more good money after bad, and consent to take partly-paid shares of a purely problematical value, involving a liability to further contributions, in exchange for their former holding—which, if practically valueless, at least involved no further liability at all.

The Legislature, while at no time going out of its way to encourage these performances, provides no very effective safeguard against abuse, and only two provisions which even indirectly discourage it. The first is the provisions of Sections 161 and 162 of the Companies Act, 1862, for the protection of dissentient shareholders; and the second is the provisions of the Companies Act, 1900, which, while by no means free from doubt, do not appear to sanction the payment of any underwriting commission in the case of a reconstruction. With regard to the second of these two points we need at present say nothing. The decision referred to at the commencement of this article dealt exclusively with the rights of dissentient shareholders and the attempts which have been made from time to time to override those rights, and to enable the case to be followed, some brief review of the earlier decisions seems desirable. In *Payne v. The Cork Company, Lim.* (*Accountant Law Reports*, XXVI, p. 31), it was held that articles of association providing that where a liquidator sold the undertaking to a new company in exchange for shares, obligations, or interests therein by virtue of a special resolution, no member of the company should be entitled to require the liquidator to abstain from carrying such sale into effect. And that if he were unwilling to accept the new shares or obligations to be allotted to him, he

might within fourteen days of the resolution require that his shares should be sold and the net proceeds paid to him, were *ultra vires*, as being an attempt to deprive dissentient shareholders of their statutory rights. This decision may, we think, be regarded as governing all cases where the sale of the undertaking is effected by the liquidator of the vendor company. Then followed the case of *Manners v. St. David's Gold and Copper Mines, Lim.* (*Accountant Law Reports*, XXXI., pp. 32 and 40). In this case the company, under a power contained in its memorandum of association, had sold its undertaking prior to going into liquidation, leaving the liquidator to distribute the proceeds of such sale in accordance with the rights and interests of the parties interested. The articles of association of this company provided that in such an event no member should have the rights given to a dissentient member by Section 161 of the Companies Act, 1862, but should be bound to accept in exchange for his shares the new shares appropriated to him, or should be entitled to give notice to the company to sell the shares so appropriated to him and to pay him the net proceeds. Mr. Justice JOYCE held that this was obviously and avowedly a device to compel the members among them to provide additional capital when no further calls could be made, and added that it was not a good device at law, and that the proposed mode of treating dissentient members was not reasonable unless they had expressly contracted to subject themselves to such treatment. Having got so far his Lordship decided that the company had acted *ultra vires*, although one might well have been excused for thinking that he was leading up to the finding that, every member being bound by the terms of the

articles, such an express contract did, in point of fact, exist as would deprive dissentient shareholders of their remedy under Section 161. As a matter of fact, however, his decision was against the company, and that decision was upheld on appeal.

In *Bisgood v. The Nile Valley Company* the position was somewhat different, in that in the earlier case the dissentient shareholders were to get nothing, and the new company benefited by the forfeiture of their interest, whereas in the present case the arrangement sought to be established was that the shares to which dissentient members were entitled were to be sold, and each such member was to receive his rateable proportion of the proceeds. *Primâ facie* such an arrangement might appear to be equitable, but it does not fulfil the requirements of the statute, which are that a member, having paid up the whole amount due upon his shares, cannot be compelled to make any further contribution, nor may his shares be either directly or indirectly forfeited for failure to make such further contributions, unless the terms of Section 161 are literally complied with. That section provides that dissentient shareholders who move in time must in default of special agreement be paid out, their interest being purchased by the liquidator of the old company at such sum as an arbitrator may award. We were in hopes that the time had at length been reached when company lawyers would realise that this was one of the few provisions of the Companies Acts which cannot be set at defiance: this week, however, Mr. Justice WARRINGTON has delivered a decision sanctioning a reconstruction scheme under circumstances that certainly cannot be very clearly distinguished from those obtaining in *Bisgood's* case. This is, we think, to be

regretted, for if an undertaking is worth reconstructing at all, it is sufficiently valuable for the scheme not to be wrecked by the necessity of paying equitable compensation to those shareholders who, having paid up all they originally agreed to pay, do not see their way to adventure further capital in the concern.

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### **Semi-Public Companies.**

---

**WE** do not propose to consider in detail the present position of Meux's Brewery Company, Lim., as shown by the first report and accounts recently issued and dated the 31st December 1905; still less do we propose to attempt to apportion blame for what appears to be a most unsatisfactory condition of affairs. We should like to point out, however, that the position of this company—and, for that matter, of several brewery companies—affords the strongest possible argument against the policy of not publishing annual accounts. And, moreover, against the general methods of numerous undertakings which, while appealing to the public for capital, and while dependent upon the public for the bulk of their capital, pose as "private" companies, and in consequence claim special rights and privileges which, upon the facts, they are clearly not entitled to.

The claim of these various brewery companies to be regarded as private companies, and therefore exempt from all ordinary supervision, seems to rest almost exclusively upon the circumstance that the shares which are most deferred—by whatever exact name they may be known—were in the first instance entirely allotted to the vendors, and are for the most part still in the same hands. It is argued that the holders of these shares are, for all

practical purposes, still the proprietors of the undertaking, that all the trading risks are theirs, and that the general public—whether they hold preference shares or debentures—are virtually in the position of creditors receiving a fixed rate of interest for money advanced. So far as debenture-holders are concerned the argument may be sound enough, for debenture-holders are, of course, creditors, and presumably secured creditors. But even a secured creditor would appear to be equitably entitled to reasonable information as to the necessarily fluctuating value of the security afforded by a floating charge, and experience shows that where debenture-holders have to wait until there has been a default before exercising their rights, the subsequent realisation of assets rarely produces sufficient to satisfy their claims in full.

It is, however, with preference shareholders that the unfairness of this policy is most clearly marked. It is quite possible that the original applicants for shares in such undertakings may have considered that they were virtually taking up the position of creditors for money lent; but, even so, that is not, and in the nature of things never could be, their position. A preference shareholder has not, and never can have, any of the rights of a creditor, and if, owing to a misunderstanding upon this point he has foregone his rights as a shareholder, he is indeed in the most deplorable of positions. Yet that is the position of the preference shareholders in many companies, and especially in brewery companies. And the position is, we think, all the more outrageous in that, in some cases at least, no real value exists—or in our opinion ever did exist—for the ordinary shares. It is obvious, however, that had no ordinary shares been issued, the preference shareholders would



never have consented to take the whole of the financial risk, surrender all control to vendors who had already been liberally paid for their business in cash and debentures, and allow those vendors to continue not merely to manage the property entirely in their own way, but also to distribute among themselves in the form of dividends on ordinary shares everything in excess of a bare fixed rate of interest on the preference capital. Where there exists value for ordinary shares, the fact that they come behind the preference shares affords a corresponding measure of security to the latter; and if the arrangement be such that whatever losses may be sustained fall upon the ordinary shares, it is only reasonable that *per contra* they should have all the benefit arising from any substantial increase in the proceeds over the original estimate.

It must be obvious, however, that in cases where the outside investor puts into the company new capital fully equal to the value of the business and assets acquired, he ought to secure the whole of that business, and not merely a fixed charge upon its profits. In cases where, owing to depreciation or other causes, the present value of the business does not exceed the amount of the preference capital, then, whatever legal rights may obtain as between the various parties, it is clear that, as a matter of fact, the holders of the most deferred class of shares have lost their money, and ought therefore to surrender control to those whose property the undertaking really is; in exactly the same way that it is only right and proper that, when the shareholders as a whole have lost their money, the control should pass into the hands of creditors.

In some cases the obviously proper course has been pursued by vendor directors, who

have carried through schemes for reduction of capital under which the loss has fallen upon the proper shoulders. In such cases criticism is disarmed, and it becomes entirely unnecessary to inquire whether at any time there existed value for the shares which have now been extinguished. But in other cases vendors do not seem to be disposed to view the matter in this light; and inasmuch as the votes of ordinary shareholders usually control the situation, it is difficult to see how any effective pressure can be brought to bear. It may be clear that the whole of the ordinary capital has been lost, even if it ever existed in fact, but so long as the holders of the ordinary shares retain control they can carry on the business and withhold dividends on preference shares on the plea that ample reserves are necessary to rehabilitate the company's position. It seems inconceivable that even an ordinary shareholder could seriously argue that this was an equitable position to assume.

It is not altogether easy to suggest a remedy for abuses which arise more or less directly in consequence of the neglect of the investing public to look after its own interests at the proper time—*i.e.*, before making the investment. But we cannot help thinking that these cases clearly demonstrate the necessity for the following provisions being made compulsory in connection with all companies registered under the Companies Acts:—

- (1) The right of preference shareholders to vote at general meetings to be inalienable.
- (2) Upon a reduction of capital the whole of the ordinary share capital to be written off before any reduction takes place on the preference shares, but the rights of ordinary shareholders as

to dividends after payment of preference dividend to continue, notwithstanding such reduction.

- (3) In the event of default in the payment of preference dividends, the voting power of ordinary shareholders to remain in abeyance during the continuation of such default, without prejudice, however, to the right of ordinary shareholders to appeal to the Court against the acts of the preference shareholders or their agents.

Under such an arrangement as this at least the more serious of the existing abuses would be overcome, in that the anomaly of shareholders, whose interest is virtually extinguished, still controlling affairs would be at once put an end to. But, upon the principle that prevention is better than cure, we would add a fourth provision—namely, that all companies registered under the Companies Acts be required to submit a Balance Sheet made up to a comparatively recent date at an ordinary general meeting to be held in the course of a month fixed by the company's articles; and that in the event of default in this provision all the directors of the company be liable to a penalty not exceeding £5 per day for every day during which such default continues. It is useless providing that accounts shall be issued to shareholders unless provision is made for a penalty in the event of non-compliance; and we see no reason why the directors of a company should not be held responsible therefor. Any possible hardship resulting from a majority of the Board acting against a minority who desired to do what was right could, it seems to us, be got over by a director who found himself in such a minority resigning; and, of

course, in any event there would be a judicial discretion as to whether or not the full penalty should be inflicted.

#### Some Legal Terms.—IV.

##### "Privity of Contract" and "Privity of Estate."

[BY OUR LEGAL CONTRIBUTOR.]

ON glancing at the above terms the accountant student may well say, "What have I to do with thee?" and, indeed, at the first blush such an indifferent view seems justifiable, for from the intricacies and niceties of the law of landlord and tenant he is for the most part mercifully delivered. A consideration, however, of certain questions that have from time to time, and on one very recent occasion indeed, obtruded their unlovely features in the Final paper would perhaps incline him to modify that view, and to bear with the few following remarks on the subject.

Let us, then, take a lease and examine it, and we shall thereby, I think, unravel the mystery. Now a lease may be described as an instrument entered into between parties who on the one side are desirous of letting and on the other of taking certain premises, the former being known as the "lessor," or "landlord," the latter as the "tenant," or "lessee." Such an instrument will be found on examination to be of a twofold nature, and to include both a "contract" and a "conveyance," for whilst the parties thereto—generally in express terms—enter into certain contractual agreements with one another, known in the case of leases under seal as "covenants," the lessor, or landlord, at the same time conveys or grants to the lessee an "estate" or "interest" in the premises.

Now it is in connection with this twofold nature of a lease that the terms under discussion arise. In so far as the lease is a "Contract" the relationship between the landlord and tenant is expressed by the term "Privity of Contract," but in so far as it operates as a "Conveyance" or transfer of an estate or interest in the premises to the lessee the relationship thereby arising is known as "Privity of Estate."

There exists, then, this double relationship between lessor and lessee, but so long as the original state of affairs remains unaltered, and the lessee remains in possession of the premises, it is difficult to distinguish them. The introduction, however, of a third party on the scene will immediately throw light upon it. Let us suppose, therefore, that for some reason or other the original lessee wishes to get rid of the premises, the question immediately arises, May he do so? From everyday experience the answer will be assuredly "Yes." It is quite possible, however, to imagine that the student, or at all events the superficial student, of "Stevens" may well feel certain qualms on the subject, and with difficulty reconcile his experience with theory. For has he not read therein that "a person cannot assign his obligation to perform a contract of any kind so as to shift from himself the liability of non-performance," without noticing, perchance, if he is a *very* superficial student, and without perhaps understanding what it means even if he is not, "that in the case of contracts concerning land certain liabilities run with the land—i.e., bind the owner for the time being."

How, then, shall these questionings be answered and practice and theory reconciled? By virtue of that double relationship to which I have before alluded—viz., "Privity of Estate" and "Privity of Contract."

True it is that, in conformity with the first part of the above quotation, the lessee is unable to rid himself of his *personal* contractual liability to his landlord on his *express* covenants or agreements in the lease, and that, too, even where his landlord has recognised the assignment, but remains bound in that respect to his landlord until the lease either expires or is otherwise put an end to.

The other relationship, however—viz., the "Privity of Estate"—which arises in virtue of the possession and enjoyment of the premises by the tenant, passes on the assignment, or rather on the landlord's expressed or implied assent thereto, out of the original lessee to the assignee. Thereupon by virtue of such privity the assignee in his turn becomes bound to the landlord, so long as he remains assignee,

*but only for so long*, in respect of all those agreements or covenants in the lease which are said "to run with the land"—i.e., all such covenants or agreements as intimately concern the premises let, such as to pay rent, do repairs, &c.

It follows from all this that if, as very rarely happens, there are no *express* covenants or agreements in the lease giving rise to a purely personal obligation on the part of the lessee, that should the lessee assign and the landlord recognise such assignment, the lessee will be entirely freed from all liability under the lease, and the sole remaining liability be that of the assignee in virtue of his "Privity of Estate." In further proof of the fact that such an assignee's liability springs solely from "Privity of Estate," it must be remembered that his liability may in turn be determined by *his* assigning over to a fresh assignee, between whom and the original landlord a similar relationship will thereupon arise.

Before taking leave of the subject an application of the principles we have been discussing to a well-known provision of the Bankruptcy Act may tend to their mutual elucidation.

It will be remembered that the Bankruptcy Act, 1883, Section 55 (6) empowers the Court to make a vesting order of disclaimed leasehold property only upon the terms of making the person in whose favour it is granted subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date of the filing of the petition. By the 13th Section of the Bankruptcy Act, 1890, the Court has been further empowered to make a vesting order subjecting the person taking thereunder to only the same liabilities and obligations as he would have incurred had the lease been *assigned* to him at the date of the filing of the petition.

Now bearing in mind what has been said on the double relationship existing between the landlord and the original lessee, it is clear that the person in whose favour a vesting order was made solely under the Act of 1883 would thereby become bound to the lessor both in respect of "Privity of Contract" and "Privity of Estate," the vesting order only being allowable on the condition of such person becoming

subject to the same liabilities and obligations as the bankrupt (*i.e.*, the lessee) was under at the date of the petition, thus including both those arising out of "Privity of Estate" and "Privity of Contract."

As a result, therefore, such a person might find himself by virtue of such "Privity of Contract" liable in respect of breaches of covenant of a date long anterior to that of his actual possession and enjoyment of the premises. Under the amending Act, however, his liability is rendered much less onerous, it being possible for the Court in its discretion to reduce it to that of an assignee of the lease as of the date of the filing of the petition. All liability in respect of "Privity of Contract" may accordingly in such a case be disregarded, an assignee, as we have seen, being only liable in respect of "Privity of Estate." Consequently the person in whose favour such an order is made will take it, irrespective of all breaches of covenant which may have occurred *before* the date of the filing of the petition, and, furthermore, by again assigning over in his turn to someone else, he may escape all liability in respect of breaches occurring *subsequently* to such assignment by him.

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### Weekly Notes.

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**A Little Study in Superannuation.** At the recent annual meeting of the Superannuation Fund Association of the Midland Railway Company the Committee's report is said to have stated that the actuaries had investigated the condition of the Fund as at 31st January 1905 and there appeared to be a deficit for the past ten years of something like £843,000. A reduction in the present scale of superannuation allowance is, we are told, under consideration, and the Chairman deprecated any discussion on the state of affairs until an extraordinary general meeting of the members could be held to consider what was to be done. We do not intend to discuss the question at all, but there are one or two little points of general interest that should not be overlooked. It is stated that the actuaries' investigation is "in accordance with the rules," but if £843,000 is the deficit for ten years, why not have actuarial valuations oftener? One wonders also what was the state of the

Fund ten years ago, and it is but natural to inquire as to the conditions of the superannuation funds of other leading railway companies.

**The Gold Reserve.** Mr. F. E. Steele, Fellow of the Institute of Bankers, delivered an interesting address to the members of the Liverpool and District Bankers' Institute, last week, on the "London Money Market." Dealing with the new move on the part of the Bank of England in borrowing surplus funds at interest from the joint-stock banks with a view to protecting and increasing the gold reserves, Mr. Steele said that the innovation imported an element of uncertainty and consequent jerkiness into the operations of the market, and therefore fostered the speculative element. It also tended to favour foreign banking houses in London at the expense of the discount houses. The new plan was a recognition of the value and need of co-operation among joint-stock banks, who were, of course, not obliged to join the scheme. Such banks, he thought, not only received a fair rate of interest from the Bank of England for the money lent to it, but also got the advantage of higher rates for that part of their "short" money which was lent in other quarters.

**Local Government in Germany.** The new volume of "Burdett" contains, among other very interesting articles, an instructive paper by Mr. G. J. N. Rogers, on German local government. We note that there is no uniform system, different methods being in use in various districts, but those in force in Prussia have been selected as the type. The following are the main points:—

Voting power or franchise bears a close relation to the amount contributed to taxation.

Local authorities possess very wide powers of taxation—*e.g.*, direct taxation in respect of ownership of land and buildings, incomes arising out of trade, &c. Direct taxes on malt, beer, dogs, amusements, changes in ownership of land, &c.; in some towns, on articles of general consumption.

Prussian Government favours the municipalisation of all services of public utility, such as gas, water, markets, electricity undertakings, and tramways. Many towns possess municipal savings banks and pawnshops, others have theatres and quarries, one manufactures bricks and tiles, another artificial stone, while yet another runs a coal mine.

The settled principle, we are told, on which these enterprises are conducted is that "the income raised

"shall suffice at least to meet the whole of the expenditure arising from the communal undertaking, inclusive of interest and redemption of the invested capital." Borrowing to cover recurring expenses is not permitted, loans being sanctioned only for expenditure which will be of both present and future benefit. The net debt outstanding per head of the population is said to be £10 13s. 6d. for the German towns as against £19 17s. 5d. for the English municipalities, but this latter figure does not include the "poor relief debt."

**British Banking**—Herr Fritz von Leonhardt, manager of the London branch of the *Länderbank*, delivered an interesting address on British banking last week at the rooms of the Society of Austrian Political Economists in Vienna. Contrasting English banks with continental institutions, the lecturer said that the former existed chiefly for the purpose of receiving deposits of money left with them for temporary interest-bearing purposes, and to this fact was due the possibility of a large portion of the national wealth being concentrated in a few centres. The natural consequence of this enormous concentration was the position of power held by the London Money Market, which was thus enabled to serve every commercial and industrial interest in the most comprehensive manner. Hand in hand with this concentration of deposits went the total reserve maintained by the English note-issuing bank, which was always observed with the closest attention, and acted as the barometer of financial weather conditions.

**Suretyship**—A recent case of *In re Hatch, Mansfield & Co., Lim. v. Weingott*. The facts briefly were:—A. guaranteed the fidelity of a person in employ of B. up to £250. This person stole goods to the value of £269, was prosecuted, and pleaded guilty. Goods to the value of £140 were recovered, and in the action mentioned A. sought to have this sum credited against his liability, while B. claimed a right to deduct from it the costs of the legal proceedings, amounting to £98. A. argued that he ought to have been consulted before the expense was incurred, but Mr. Justice Jelf held that B. had acted reasonably, and gave judgment accordingly.

**Limited Liability** A Paris contemporary publishes the following interesting schedule of the taxation of limited liability companies in Russia, to be in force from January 1st 1906 to January 1st 1908:—

Company's Net Profits	Tax on Net Profits	Tax on Share Capital
Per cent. Less than 3	—	Per thousand 1½
From 3 to 4	3	—
" 4 " 5	4	—
" 5 " 6	5	—
" 6 " 7	5½	—
" 7 " 8	6	—
" 8 " 9½	6½	—
" 9 " 10½	7	—
" 10 " 11	7½	—
" 15 " 16	10	—
" 19 " 20	14	—

It is understood that the taxes on limited liability companies which have already been in force up to the present date (mainly on *share capital* instead of *profits*) are to be maintained, the new taxes being regarded as supplementary. In view of the appeals recently issued for foreign capital to be invested in industrial enterprises in Russia, investors should mark, read, and inwardly digest the above.

**Debt Collection and Solicitors.** The question was raised by a correspondent last week as to whether it was permissible for anyone other than a solicitor when applying for debts on behalf of a client to threaten legal proceedings in default of payment. The point is not one that we have had occasion to study very closely, but we believe we are right in saying that the two things which a debt collector must avoid doing are to claim payment from the debtor of a fee for the trouble that he has been put to, and to in any way represent himself as being a solicitor when in point of fact he is not. The question as to what amounts to such a representation is, of course, a question of fact in each case, but reputable practitioners would naturally have no desire to sail at all close to the wind. We would suggest that a more proper and equally efficacious clause in the application would be to the following effect:—"In the event of this request not being complied with by the inst. I have my client's instructions to place the matter in the hands of his solicitors without further notice." We think we are safe in saying that reputable solicitors would not accept instructions to commence proceedings without having first themselves applied for payment, unless the circumstances of the case clearly rendered such a course desirable in the interest of their clients.

**Bankrupt Contractors** A point of considerable interest was decided by his Honour Lush-Wilson in *Sub-contracts*. the Plymouth Bankruptcy Court in *In re Frederick Waterman; ex parte J. Cran & Co.* This was a

motion that it might be declared that the trustee in bankruptcy was the trustee of a sum of £900 odd received by him from the Lords Commissioners of the Admiralty in part payment of the contract price of certain machinery and work done by the applicants, and a further sum of £120 when received from the Lords Commissioners, and that he be restrained from dealing with such moneys save by paying the same to the applicants. The bankrupt was a boat-builder who had undertaken a contract for the Admiralty, and the applicants were under contract to supply the machinery therefor. The applicants now claimed that the moneys paid by the Admiralty for their machinery were their moneys; the respondent trustee, on the other hand, contended that they belonged to the estate in bankruptcy, and that the applicants' proper remedy was to put in a proof against the estate. After a lengthy hearing his Honour held that the Admiralty, being solvent beyond suspicion, the applicants had been perfectly content to rely on the promise of the Admiralty for payment, and that there never had been a promise by the bankrupt to himself pay the applicants. There was, therefore, he held, never a promise as between contractor and sub-contractor, as it lacked one essential—an obligation to pay under any circumstances. He accordingly gave judgment for the applicants for £904 9s. 6d., but granted a three weeks' stay of execution in order that the question of appeal to the Divisional Court might be considered. In view of the considerable importance attaching to this decision (which appears in our Law Reports this week), we trust that it will come before the High Court.

#### Municipal Loans and Life Insurance Funds.

It is of interest to note that, according to *The Municipal Journal*, the aggregate amount lent by life insurance companies to local authorities in 1884-5 was £22,593,991, in 1894-5 £27,945,482, and in 1904-5 £42,636,310, of which last figure nearly fourteen and a-half millions is due to the Prudential Assurance Company alone, upwards of two millions sterling is due to the Standard and the Scottish Widows, while the Alliance, the Equitable, the Northern, the North British and Mercantile, and the Royal, have each contributed upwards of one million. It is important to bear in mind, however, that life insurance companies, although they evidently look with favour upon this form of investment, accept it under quite different conditions to those now offered to the general public. The latter has to be content with stock, the market price of which is a somewhat fluctuating, and, at the present time, certainly not very improving,

quantity. Insurance offices, on the other hand, lend upon a mortgage, and are thus sure of a return of their original capital at the date fixed for redemption.

#### Directors v. Shareholders.

The Court of Appeal has upheld the decision of Mr. Justice Warrington in the case of *The Automatic Self-Cleaning Filter Syndicate, Lim. v. Cunninghame and others*, holding that by appointing directors the shareholders have deputed to them the duty of managing the company's affairs, and can not resume the reins at will with regard to isolated matters. From the point of view of responsible directors this holding seems only reasonable, but if, on the other hand, the directors of a company were not acting *bona fide*, and were for their own purposes letting slip an opportunity which in the nature of things could not recur and was in the interest of the shareholders, it certainly seems a little hard that the latter should not be able to protect their interests by the usual process of an injunction.

#### Trustee Savings Banks.

The Report of the Inspection Committee of Trustee Savings Banks for the year ended the 20th November last, which has just been issued, shows a very satisfactory condition of affairs, only one bank being adversely reported upon. The enormous improvement in the financial standing of these institutions since the establishment of the Inspection Committee is a testimony to the value of the system of statutory supervision in the hands of an experienced and practical body of men independent of all officialism. It is also, of course, largely the result of the improved audit which has now been brought about in consequence of the employment of professional accountants. During the past year the number of depositors at these institutions has increased by 15,130, and now amounts to 1,702,791. There is also an increase of £169,648 in the amount of stock held, which now exceeds two and a quarter millions, but on the other hand there has been a falling-off of £259,482 in the cash deposits for the year, the actual total of which, however, amounted to the substantial sum of £52,280,856.

#### The Cardiff Corporation Accounts.

Our readers will have observed from the advertisement which has appeared in our last few issues that the Cardiff Corporation is taking steps of a practical nature to reorganise its system of accounts and finances by inviting applications for the appointment of an officer

to be styled "The City Treasurer and Controller of Accounts and Superintendent Assistant Overseer," at a commencing salary of £750 per annum. As we have already stated, we do not think that the system recommended by the expert employed by the Corporation is that best suited to the requirements of such cases, in that it throws upon the same person responsibility for the performance of two entirely distinct sets of duties—namely, the proper accounting for money, and the keeping of those records by which such accounting may be tested. But however that may be, the system, to produce any measure of success whatever, must necessarily be in good and experienced hands, and it is satisfactory to note that the commencing salary offered is, or should be, sufficient to achieve that purpose. It may, however, well be questioned whether anything is gained by stating that applications will only be entertained from those who have a thorough practical acquaintance with the work of municipal finance and accountancy. This, of course, means that only present or past employees of local authorities are eligible for the post. It is probable that in any event the selection would have to be made within this somewhat restricted area, but we altogether fail to see what is gained by disqualifying out of hand all applicants who cannot fulfil this somewhat arbitrary qualification. There would at least have been no harm in admitting qualified accountants of all kinds to compete for the post upon equal terms, even although in the long run it would in all probability have had to be given to a man who had previously been in municipal employ.

### Current Law.

*(Under this heading are noted from time to time the salient features of decisions of interest which, so far, have not appeared in our "Law Reports." As, however, these notes are necessarily greatly condensed, reference should in all cases be made to the fuller report when it appears.)*

#### COMPANY LAW.

*The Automatic Self-Cleaning Filter Syndicate,  
Lim. v. Cunninghame.*

C.A.

Held, following decision of Warrington, J. (*Acct. Law Reports XXXIV.*, p. 32), that the directors of a company are entitled to refuse to carry out an agreement for the sale of the company's assets which they consider imprudent, notwithstanding that the share-

holders have by a simple majority passed a resolution that such agreement be adopted.—(*Times*, March 23.)

*Fuller v. White Feather Reward, Lim.*

Warrington, J.

Held, that under certain circumstances the selling of a company's undertaking under a power in its memorandum of association for partly-paid shares in another company, under conditions excluding Section 161 of the Companies Act, 1862, is not *ultra vires*. *Bisgood v. Nile Valley Company, Lim.* distinguished.—(*Times*, March 28.)

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### Deeds of Arrangement.

*(To the Editor of The Accountant.)*

SIR,—In the report *Peat v. Clayton*, on p. 29 of your Law Reports, I notice that the Deed of Arrangement was executed on the 24th October, and duly registered under the Act on November 7th. The Act provides that Deeds of Arrangement must be registered within seven days. I shall be glad if you can explain this extension of time.

Yours faithfully,

STUDENT.

[There must be some error in the report, as no extension of time is possible.—*Ed. Acct.*]

#### Auditor's Fees.

*(To the Editor of The Accountant.)*

SIR,—Will you kindly oblige me by letting me know what is considered a fair charge for auditing accounts—say the work occupied a fortnight of seven hours a day. There would be no railway fares.

Yours truly,

March 22nd 1906.

D.

[The recognised rate for principal's time is 3 guineas a day, but, of course, this can only be justified when the

work is of a nature to necessitate the employment of a principal. Much naturally depends upon the nature of the work involved.—ED. ACCT.]

### A Designation for the Profession.

(To the Editor of The Accountant.)

SIR,—For some considerable time it has been in my mind that the Institute should adopt some other title than that of "Chartered Accountant" for its members, just as the old-fashioned "Attorney" was dropped for "Solicitor" in the legal profession. Let the members of the Institute adopt a term to the use of which they might obtain the exclusive right—there would then be no clashing with the various other brands of *accountants*. I object to the very word *accountant*, as it has been my privilege (or misfortune) to see it joined to many and varied occupations—*e.g.*, "bill-sticker" and "rent collector."

It is an undoubted fact that a large proportion of the business public does not distinguish between Chartered, Incorporated, or any other style of *accountant*.

Yours faithfully,

24th March 1906.

A.

[We have ourselves expressed this view more than once.—ED. ACCT.]

### The Iniquities of the Income Tax.

(To the Editor of The Accountant.)

SIR,—I have just read my *Accountant* of March 24th, and note therein your remarks upon my contribution to *The Financial Times*, "The Iniquities of Income Tax." May I say I, in common with yourself, feel no sympathy for the small traders, who with certain facilities neglect to keep proper books of account, and so place themselves in the position of being unable to resist successfully any income-tax assessment which may be put upon them.

When I wrote the article, however, I had in my mind's eye other cases, of which I have seen many examples. The cases to which I refer are those of taxpayers who work their business by their own labour and by that of their family, who employ no outside labour, except, perhaps, that of a boy for odd jobs and errands. These persons are often taxed at (say) £200 and the abatement allowed, and the small payment of (say) £2 per annum cannot be resisted, as they are not sufficiently competent to draw up accounts which would be acceptable to the Inland Revenue officials. Moreover, they are not sufficiently wealthy to employ a clerk for the purpose of keeping

their books, or to make an arrangement with an outside accountant to do them this service.

Again, I had in my mind the case of the small trader who is assessed at "£160 abated." This trader not being called upon to pay anything upon his business profit thinks he is getting off entirely, whereas the fact is that, although he is not paying upon his business income (which does not amount to more than, let us say, £2 a week), if he is in receipt of any private income whatever, of the tax thereupon not a penny is returnable. "£160 abated" is held by some persons to be almost a system in some parts of the country, and if this is so there is no doubt that the taxpayer is often very hard hit, and this class of small taxpayer is not the best able to protect its own interests.

I am entirely of your opinion that the bulk of the disputes between the members of the taxpaying public and Surveyors of Taxes arise from the non-existence of accounts, or from the bad methods of account-keeping adopted by assessed persons. Were accounts properly produced and submitted to the Surveyors of Taxes, there would be much less irritation on both sides, and an enormous amount of valuable time would be saved.

Yours faithfully,

March 26th 1906.

T. HALLETT FRY.

### Legislation for the Profession.

(To the Editor of The Accountant.)

SIR,—I am rather surprised that the younger members of the profession do not take more interest in this subject. It is, perhaps, not of such importance in the larger towns, where the position of a Chartered or Incorporated Accountant is fairly established, but in the small towns the matter is of the most serious moment. The profession is the worst paid of any; many Chartered Accountants have to work for one or two guineas per day, and it is no use saying "that they ought not to take work at that rate."

In the class of towns referred to a lot of the work, probably the greater part, is in the audit of tradesmen's accounts, and they would rather not have their accounts done at all than pay a decent fee, and there are plenty of accountants who will take a low fee.

One of the results of this is that Chartered Accountants in some of the smaller towns are income-tax collectors, auctioneers, stockbrokers, and anything else that will bring "grist to the mill." Can it be wondered at that the profession has not that dignity



which one would wish it to have? I do not blame the accountants who do such business, because I know the wretched struggle many of them have to earn a living at all compatible with their position, but I do blame the Institute for not taking steps to support the weaker brethren, and to place the accountant in as good a position as the member of one of the other professions.

If there could be some legislation to improve the status of the profession better fees would follow, and more varied work; but at present life in the small towns is hardly worth living when the best audits are taken by London firms, and where one gets paid at the same rate as a good clerk for difficult and trying work—those who have experience know that the small audits of tradesmen's accounts are far more difficult than some of the large ones, such as manufactories, where the accounts are well kept.

It is time that some steps should be taken to alter the existing state of affairs, which are a disgrace to the profession, and I am prepared, if the Chartered Accountants of the small towns show any real desire for reform, to help in the formation of a special committee to discuss matters with a view to bringing forward a resolution at the General Meeting.

Yours obediently,

NOMEN.

#### What is an Incorporated Accountant?

(To the Editor of *The Accountant*.)

SIR,—Referring to your article in the issue of *The Accountant* of the 24th inst., we beg to inform you that, under the advice of counsel, the Society of Accountants and Auditors, which was incorporated in 1885, have determined to proceed with the action against Mr. Goodway and the London Association of Accountants, Lim., with a view to restraining the use of the term "Incorporated Accountants" by persons not members of that Society, and must ask that all observations may be suspended whilst the matter is before the Courts.

Yours obediently,

NORTON, ROSE, NORTON, FARISH & CO.

London, 28th March 1906.

#### Birmingham Chartered Accountant Students' Society.

A Joint Debate with the members of the Birmingham Law Students' Society was held at the Library, 8 Newhall Street, on March 20th. Forty-two members were present.

The moot was: "That this Meeting approves of Earl Roberts' scheme for Compulsory Military Training." Mr.

F. S. Pearson, LL.B., occupied the chair, and the following members opened the debate:—

*Affirmative*.—Messrs. W. H. C. Sharp, B.A. (L.S.), A. K. Edwards (C.A.S.), J. J. Pritchard (L.S.), and T. T. Cooper, A.C.A. (C.A.S.).

*Negative*.—Messrs. C. Braden Allen, A.C.A. (C.A.S.), G. M. Bark, B.A., LL.B. (L.S.), G. H. Goldberg (C.A.S.), and H. S. Hall (L.S.).

The following members also spoke:—Messrs. J. D. H. Osborn, W. F. Chaundy, and J. C. Pearce.

The moot was negatived by 18 to 16.

### The Sheffield Society of Chartered Accountants.

#### Annual Meeting.

At the Annual General Meeting of the above Society, held at the Library, Hoole's Chambers, on 16th March 1906, the following

#### REPORT AND ACCOUNTS

for the year ended 31st December 1905 were approved and adopted:—

Your Committee have pleasure in presenting to you their twenty-fourth annual report for the year ended 31st December 1905, together with the Statement of Accounts and Balance Sheet at that date.

The accounts have been examined and duly certified by the auditor, Mr. John Wortley, F.C.A.

Messrs. W. Grafton Hawson, A.C.A., J. Toothill Barr, A.C.A., W. B. Douthwaite, A.C.A., L. A. Whitaker, A.C.A., and G. C. Webster, A.C.A., have been admitted members of the Society during the year. The total number of members at the present time is 59.

The following clerks articulated to local members of the Institute have, during the year, passed the examinations of the Institute of Chartered Accountants:—

Date	Examination	Clerk's Name	In the Service of
1905			
May	Intermediate..	T. C. Parkin, Jun...	T. C. Parkin
"	Final ..	M. H. Foxon ..	R. L. Foxon
"	" ..	G. E. Greening ..	G. Franklin
"	" ..	F. H. Smith ..	W. Hubert Smith
"	" ..	H. J. Watson ..	G. E. Carline
"	" ..	A. L. Wing ..	W. Wing
November	Intermediate..	H. H. Tomasson ..	N. W. Burbidge
"	" ..	C. L. Widlake ..	W. Holmes
"	Final ..	H. O. Bolton ..	A. W. Macredie
"	" ..	F. Moore ..	J. W. Best

The Students' Instruction Classes, which have been continued during the year, have been well attended and have proved of great benefit to the students.

This Society became entitled to a representative on the Court of the Sheffield University, and at a meeting of the Society held on the 6th June last, Mr. W. H. Camm was elected to fill the office.

The Library has been used 462 times; 20 members of this Society, and 44 members of the Students' Society having availed themselves of the privilege.

Your Committee have pleasure in sending herewith a copy of the Regulations of the Society brought up to date, and beg to draw attention to the clauses suggested to be inserted

in articles of clerkship used by members of this Society, a copy of which will be found attached to the Regulations.

In accordance with Article 22, the following members of the Committee retire, and are not eligible for re-election, viz.:—Messrs. N. W. Burbidge, W. H. Camm, W. Holmes, and W. H. Smith.

By order of the Committee,

F. E. FOSTER,

President.

#### INCOME AND EXPENDITURE ACCOUNT for the Year ended 31st December 1905.

<i>Expenditure</i>				<i>Income</i>			
	£	s	d		£	s	d
To Library Expenses:—				By Subscriptions—58 at £1 1s.	60	18	0
Rent .. .. .	50	0	0	Entrance Fees—5 at £2 2s.	10	10	0
Use and Renewal of Books and Furniture	24	13	7	Institute of Chartered Accountants—			
Printing and Sundries .. .. .	3	4	6	Grant towards Maintenance of Library for the Year	35	11	3
	77	18	1	Bank Interest .. .. .	6	10	8
Less Students' Society, Use of Room, Fines, &c. .. .. .	6	15	6				
			71 2 7				
General Expenses .. .. .			19 13 0				
Balance to Capital Account .. .. .			22 14 4				
			<u>£113 9 11</u>				<u>£113 9 11</u>

#### BALANCE SHEET, 31st December 1905.

<i>Liabilities</i>				<i>Assets</i>			
	£	s	d		£	s	d
Capital Account—				Institute of Chartered Accountants	35	11	3
As at 31st December 1904 .. .. .	446	0	5	Sheffield Chartered Accountants Students' Society .. .. .	2	13	0
Less Donation to Sheffield University Fund	50	0	0				38 4 3
	396	0	5	Furniture and Fittings:—			
Income and Expenditure Account Balance .. .. .	22	14	4	As at 31st December 1904 .. .. .	74	5	8
			418 14 9	Less Depreciation written off .. .. .	3	14	3
Sundry Creditors .. .. .			13 2 6				70 11 5
Suspense Account—Rent Reserved .. .. .			4 3 4	Books in Library:—			
Subscription Paid in Advance .. .. .			1 1 0	As at 31st December 1904 .. .. .	104	16	8
				Less Depreciation written off .. .. .	20	19	4
					83	17	4
				Add Purchases during Year .. .. .	4	0	6
							87 17 10
				Subscription in Arrear .. .. .			1 1 0
				Cash at Sheffield Banking Company, Lim. .. .. .			239 7 1
							<u>£437 1 7</u>
			<u>£437 1 7</u>				

There is a contingent liability of £19 9s. in respect of expenses of the Students' Classes as on December 31st 1905.

Sheffield, 3rd March 1906.

Examined and found correct, JOHN WORTLEY, F.C.A., Auditor.

Messrs. Jarvis, W. Barber, J. W. Best, A. W. Macredie, and T. G. Shuttleworth were elected members of the Committee in place of those retiring, and the officers for the ensuing year are:—Messrs. S. Taylor Gill, President; F. H. Metcalfe, Vice-President; J. M. Moulson, Hon. Treasurer; John Wortley, Auditor; and H. E. Percy Beard, Hon. Secretary.

The date of the annual dinner was fixed for May 11th.

#### Liverpool Society of Chartered Accountants.

At a recent Committee Meeting the following were appointed officers for the ensuing year:—

Mr. E. D. White, F.C.A., President.

„ B. Cookson, F.C.A., Vice-President.

„ R. S. Blease, F.C.A., Hon. Treasurer.

„ W. E. Mounsey, F.C.A., Hon. Secretary.

## The Transvaal Society of Accountants.

THE first annual meeting of the above Society was held on February 15th, at the Board Room, Exploration Buildings, Johannesburg.

Mr. Howard, Pim, President, was in the chair, and was supported by the following members of the Council:—Messrs. A. Aiken, S. Thomson, F. R. Lynch, J. H. Muir, and C. Stuart.

There were a considerable number of members present, including Messrs. F. S. Tudhope, D. P. C. Blair, T. L. Pryce, B. Tatham, C. H. Hayward, H. J. Roberts, Geo. Parkes, T. B. Carruthers, H. J. Vining, G. Leighton, E. S. L. Taaffe, C. L. Andersson, G. M. Pemberton, J. W. Buckland, R. M. Thom, H. G. Leete, A. R. Wighton, H. K. Sheppard, W. H. Mapleston, G. D. Estill, H. Taylor, J. Bottomley, W. F. Savage, L. Melvill, A. C. M. Sedgwick, Alfred Williamson, M. Abrahams, J. Souter, F. A. Stokes, W. Scott, S. C. Carruthers, F. Hilner, L. K. Jacobs, H. J. Hill, S. W. Lorie, and F. E. Roberts (Registrar).

The Registrar having read the notice convening the meeting,

The Chairman moved the adoption of the Report and Accounts, which were taken as read.

### REPORT AND ACCOUNTS.

The first Council of the Society have pleasure in laying before members their report on the transactions of the Society and of the Council for the past year.

They came into office on the 15th day of February 1905, and the period of their appointment ceases at this meeting.

The Register to-day shows 594 members; 593 members were admitted by the Provisional Council. Of these, however, two have resigned, three have not paid their registration fees, and five have died during the year, so that the actual number of original members on the Register is now 583. In addition to this number your Council has admitted 11 applicants entitled to admission owing to their membership of other Societies, and five have qualified for membership at the first examinations of the Society held in December last, one of whom has since joined the Society.

At the first meeting of the Council Mr. Howard Pim was elected President, and Messrs. Alex. Aiken and Samuel Thomson Vice-Presidents.

The first business occupying the Council's attention was

that of the Bye-Laws, which were finally assented to by the Lieutenant-Governor and gazetted on the 31st March 1905.

The next matter which occupied the Council's attention was the right of certain of the partners in a firm of Chartered Accountants practising in the Transvaal, who were not members of the Society, to hold themselves out as accountants practising in the Transvaal.

The attention of the Government was called to this case, and one of these gentlemen was prosecuted in order to obtain a formal definition of the Council's powers and rights under Ordinance 3 of 1904. The case was heard before the Assistant Resident Magistrate upon the 3rd day of June 1905, and decided by him against the Council. With this decision the Council are not satisfied, but they have not succeeded in obtaining a revision of the Magistrate's decision by the Supreme Court.

A further point arose in connection with the same firm when one of the partners applied for admission to the Register. This the Council agreed to, subject to his satisfying them that he intended to reside in the Transvaal for the purpose of practising his profession.

This satisfaction he refused to give, and took action against the Council to compel them to place his name upon the Register. The case came before Mr. Justice Solomon, presiding at the Witwatersrand High Court, on the 22nd day of June 1905, who decided that the Council was entitled to the assurance asked for. The required assurance was then given, and the applicant placed upon the Register.

Negotiations with a view to obtaining reciprocity with Australian Institutes have been commenced.

On the 26th April 1905 the Council appointed an Examination Committee. They proceeded to select books for study and make all other preliminary arrangements necessary for the Society's examinations, and were able to arrange for the holding of Intermediate and Final Examinations on the 12th, 13th, and 14th December 1905. Nine candidates presented themselves for each of these examinations, and in each case five of these satisfied the examiners and the Council.

After careful consideration the Council has decided to consider the following as equivalent to the Society's Preliminary Examination, and sufficient to exempt candidates for membership of the Society therefrom:—

- (1) Transvaal Leaving Certificate.
- (2) Cape Matriculation.
- (3) Senior Oxford and Cambridge Local.
- (4) Senior College of Preceptors.

Your Council have had under consideration the low scale of fees paid to accountants sub-



## PRESIDENT'S ADDRESS.

Gentlemen, I have the honour to-day to lay before you, and move the adoption of, the Report of the first Council of your Society.

The first matter dealt with therein is the membership of the Society, and this portion of the Report I think you will consider satisfactory, especially the fact that in December last five gentlemen qualified themselves by examination to become members.

*Accounts.*

As will be seen from the Balance Sheet, the financial position of the Society is a very satisfactory one, as it has actual cash in the bank amounting to £3,330 15s. 2d., against liabilities of only £220 10s. 3d. The Income and Expenditure Account for the period from the 15th August 1904 to the 31st December 1905 shows a total expenditure of £1,930 18s. 8d., as against an income of £5,168 7s. 7d., the difference being the £3,237 8s. 11d. carried to accumulated fund. The above figure of £5,168 7s. 7d. is made up of:—

Registration Fees	...	...	...	£3,155	5	0
Subscriptions and Sundry Revenues	...	...	...	2,013	2	7
				<u>£5,168</u>	<u>7</u>	<u>7</u>

It will be thus seen that the ordinary revenue of the Society, excluding Registration Fees, has more than covered all its expenditure, which, I may also say, appears to me exceptionally heavy under every heading. Members will understand that a large amount of extra work has had to be done by our officials, and that the advertising, printing, and legal and sundry expenses for the period dealt with are all far in excess of what I anticipate will prove their normal amounts.

*Bye-laws.*

You will remember that at the last meeting of the Society, held on the 10th February, with adjournment to the 14th February 1905, draft bye-laws were passed for confirmation by the Lieutenant-Governor, and the final settlement of these draft bye-laws with the Government was left in the hands of your Council. As soon as possible after this meeting they were sent to the Government, and after some delay the Council were informed by the Attorney-General that subject to the alteration of two bye-laws they were acceptable to the Government, and would be gazetted.

The first change requested was in draft Bye-law No. 43, which stated: "That the minutes of any meeting signed by 'the Chairman of that meeting or by the Chairman of a 'subsequent meeting shall be *prima facie* evidence of the 'facts therein stated.'"

The Attorney-General pointed out that this bye-law, in so far as it was of any effect whatever, appeared to be *ultra vires*, and requested its deletion. This alteration your Council had no difficulty in agreeing to.

The second objection was a far more serious one, and related to draft Bye-law No. 33, which read as follows: "Any firm all of whose partners are members of the Society may publicly use their firm-name, so long as every partner of the firm is a member of the Society, and no member of the Society shall publicly use his firm-name unless every member of that firm be a member of the Society."

You will remember the debates we had last year on this question, and how strongly some members felt the necessity of some regulations upon these lines. The Attorney-General, however, informed us that in his opinion this proposed bye-law was *ultra vires*, and went beyond our Ordinance. Your Council took every step within their power to lay the Society's view of this matter before the Attorney-General, and a special deputation, consisting of Mr. Samuel Thomson, Advocate Saul Solomon, and myself, proceeded to Pretoria and interviewed the Attorney-General on the subject, other members of the Government being also present. He had, however, no doubt in his mind that the proposed bye-law went beyond the powers conferred upon the Society by our Ordinance, and your Council was, therefore, reluctantly compelled to abandon it. Members will, however, understand that by doing so the Society's legal position was in no way prejudiced, as this rests upon the Ordinance, which no bye-law can extend or alter; and had any bye-law which could be considered illegal been allowed to pass, it might be contested as in conflict with the Ordinance and upset by the first person against whom the Council decided to put it in force.

As mentioned in the Council's Report, the bye-laws, as amended, were accepted by the Government, and duly gazetted on the 31st March.

*Meaning of Resident.*

The next important point the Council had to deal with was the question of the admission to the Register of certain members of the Institute of Chartered Accountants who were in the Transvaal when the Council came into existence, and had opened offices in Johannesburg. In order to define and clear up as far as possible the meaning of the word "resident" in Section 7 of the Ordinance, and find out how it affected these gentlemen, the Council took Mr. Advocate Leonard's opinion, which was as follows:—

"It is difficult to give a general answer to the first question put to me. I can only say generally that no

one could claim to be 'resident in the Transvaal' who could not be said, in the ordinary sense, to be living there. A man who has his ordinary and permanent place of dwelling elsewhere, and only pays periodical visits to this country, cannot, in my opinion, be considered as resident in the Transvaal within the meaning of the Ordinance, even though he has property in this country or is connected with a local business."

Acting on this opinion, we asked the gentlemen concerned to give us some evidence that they expected to be resident in the Transvaal within the meaning of the Ordinance, and on receipt of replies which appeared to your Council satisfactory, they were admitted to the Register and commenced business in the Transvaal.

#### *Non-Residents Practising.*

In the opinion of your Council this involved also the commencing of business in the Transvaal by all the partners of the firm to which these gentlemen belonged, and placed the remaining partners of this firm in the position of holding themselves out as accountants practising in the Transvaal, although not members of our Society, and thereby committing a breach of the Ordinance. In order to make this position clear, and without any personal feeling towards the firm in question, we called the attention of the Government to the advent to the Transvaal of a third partner in this firm, and this gentleman, Mr. H. J. Page, the Crown decided to prosecute.

The case was heard before the Assistant Resident Magistrate, Mr. Schuurman, on the 3rd June 1905, and was decided in Mr. Page's favour. With this decision the Council did not agree, and approached the Attorney-General with the object of getting him to ask the Supreme Court to bring the magistrate's finding in review under Section 43 of the 1902 Proclamation regulating the Courts of Resident Magistrates. To our request Sir Richard Solomon was good enough to give his personal attention, but felt compelled to refuse it, his opinion being stated in the following terms:—

"The accused Page was charged with contravening Section 1 of the Accountants' Ordinance, 1904, and was acquitted.

"From such acquittal there can be no appeal, nor in my opinion can I bring the case in review before the Supreme Court under Section 43 of the Magistrates' Courts Proclamation, 1902.

"That section only gives me power to bring a case in review on a pure question of law, when I am dissatisfied with the decision on such a point by a Court of Resident Magistrate for the future guidance of the Courts of Resident Magistrates."

In my opinion there was no such question of law raised in the case of *Rex v. Page*.

The magistrate may have drawn a wrong inference from certain facts, but he did not decide a question of pure law, and in my opinion the Supreme Court would not deal with the case in question under Section 43 of the Magistrates' Courts Proclamation.

In any future prosecution under Section 1 of the Accountants' Ordinance no Court, not even the magistrate who tried the case of *Page*, could be influenced on questions of law which might arise on the prosecution by the decision in the case of *Rex v. Page*.

I regret, therefore, that I cannot ask the Supreme Court to review the case under the aforesaid section."

#### *Requirements for Registration.*

On the 28th of April 1905 Mr. Page applied for admission to the Register. The Council, in reply, asked him to satisfy them that he was resident in the Transvaal within the meaning of the Ordinance, pointing out that in their opinion mere physical presence within the frontiers of the Transvaal was not sufficient to justify his admission. We further stated that we were prepared to admit Mr. Page on his personal assurance that he intended to reside in this Colony. This assurance Mr. Page did not give, and took action in the Rand High Court, his application being heard before Mr. Justice Solomon on Thursday, the 22nd June 1905.

He contended that the Council had no right to ask for this assurance of residence, that his physical presence inside the borders of the Colony was sufficient, and that, had the Legislature intended that the word "residence" should be interpreted to mean more than this, they would have added a fixed period of time to the conditions. The act of the Council in refusing him admission was, therefore, beyond their authority.

Mr. Justice Solomon, in giving judgment in favour of the Society, stated that Section 7 of the Ordinance clearly showed that residence is an essential for application, and therefore the Council had every right to call upon an applicant to prove to their satisfaction that he was a resident. The phrase "resident in the Transvaal" meant more than mere physical presence, it meant that a man was *residing in* the Transvaal, and not merely that he was *in* the Transvaal, and this the Council was fully entitled to call upon Mr. Page to prove. The Council might require an assurance from a man that his presence here was not merely temporary—that is, that he will reside here for some period of time after admission. Further, the Court was not a Court of Appeal from any decision of the Council. It was true that cases might arise where the Court would interfere, as where the Council acted

capriciously or *mala fides*, but so long as the Council acted honestly the Court would not interfere. In this case the Council had acted in a perfectly proper manner and as reasonably as could possibly be expected.

Immediately after this judgment was delivered, Mr. Page gave the assurance asked for, and was admitted as a member.

In this connection I would like to point out that the Council raise no objection whatever to the course taken by Mr. Page. It was for the advantage of all parties that the legal position on this important point should be clearly defined, and Mr. Page took the only course by which this desirable result could be obtained.

As a further proof of the Council's attitude in this whole matter, which I am sure the Society will confirm, the costs of this action were not applied for by the Society, each party paying its own.

The view I take of both these actions is that their result will be entirely for the benefit of the Society, although we have not obtained all we want, or indeed, as I think, had a right to expect. What we gain is that, in the face of opposition stronger than we ever contemplated, our position is defined and the interpretation of the word "resident" adopted by the Council has been confirmed and justified by the Court.

#### *Attitude of Accountancy Profession.*

Attacks have been made upon the Society during the year which make it clear that misunderstanding still exists with regard to the nature of our Ordinance and the attitude adopted by us, especially towards accountants residing outside the Transvaal. That such misunderstanding should arise is only natural, indeed inseparable from pioneer work of this kind; but we do feel that we have not received from some sections of the accountancy profession the consideration to which we are entitled. At the same time, as I hope to show you later, the position is improving, misunderstandings are being cleared away, and our attitude is becoming better understood.

To only one of these attacks do I now propose to allude, the gross unfairness of which was keenly felt. It was a letter appearing in the *London Accountant* of the 7th October 1905, over the signature "X," and was published with the editorial comment:—"There are many assertions 'in this letter which would have been better if accompanied by chapter and verse.'"

The letter is headed, "The Transvaal Ordinance worse than Kruger," and commences by stating that our Ordinance "prevents any Chartered Accountant from practising in that Colony unless he is resident there," entirely omitting to mention that any such person, if resident, can be a member of the Society. The letter proceeds to speak

of our action having been "instigated by absolutely selfish professional motives." It continues in this vein of personal abuse, to which I need not further allude; but what will this meeting think of the statement that "the Transvaal authorities have said, 'we intend to prevent, 'to the best of our legislative ability, an independent 'examination of figures';" and later the letter states: "The investor is free to send his expert accountant to any part of the world—to America, to Australia, to any other part of South Africa, to examine independently, except 'to the Transvaal.'"

It is well known, gentlemen, to everyone of you that such statements as these are absolutely without foundation; there is nothing whatever in our Ordinance to prevent anyone sending whoever he likes to investigate accounts in this Colony. All that the Transvaal Ordinance does is that for the protection of the public, both in this country and in Europe, and of the good name of the accountancy profession, it grants this Society a certain control over all persons resident in the Transvaal who hold themselves out as accountants practising in the Transvaal. With no other persons are we concerned, and over no other persons have we any ambition to exercise authority.

#### *Correspondence with Institute of Chartered Accountants.*

I am pleased to inform this meeting, however, that at the present time matters have reached a more satisfactory position. After correspondence with a member of the Council of the Institute of Chartered Accountants in England and Wales, in which I venture to think some misunderstandings were cleared up, the Institute wrote an official letter on the 1st of November last, which reads as follows:—

"I should be much obliged if you would kindly state for the information of the Council of this Institute what construction the Council of your Society propose to place on the Transvaal Ordinance with regard to the following points, viz.:—

Assuming an English accountant were to proceed to the Transvaal by the direction of clients in England, with the object of investigating the accounts of a business in the Transvaal, and that whilst there he limited the work he did to work that his clients in England had entrusted to him, and in no way held himself out as being ready or willing to do the work of a public accountant, would he come within the restrictions imposed by the Transvaal Ordinance or Bye-laws, even though he were to complete and sign his report, or reports, before he left the limits of the Colony?

Further, if he were—being engaged in practice in England, and having received instructions from a client in the Transvaal or elsewhere in South Africa—to proceed to the Transvaal and investigate the accounts of a concern there, would he be permitted to

do so without infringing the Ordinance or Bye-laws, and could he then make his reports in the Transvaal or not?"

To this your Council replied as follows:—

"For the information of the Council of your Institute my Council desire me to state:—

That, assuming an English accountant were to proceed to the Transvaal by the direction of clients in England, with the object of investigating the accounts of a business in the Transvaal, and that whilst there he limited the work he did to the work that the clients in England had entrusted to him, and in no way held himself out as being ready or willing to do the work of a public accountant, he would not come within the restrictions imposed by the Transvaal Ordinance or Bye-laws, even though he were to complete and sign his report, or reports, before he left the limits of the Colony.

Further, that if he were—being engaged in practice in England, and having received instructions from a client in the Transvaal or elsewhere in South Africa—to proceed to the Transvaal and investigate the accounts of a concern there, he would do so without infringing the Ordinance or Bye-laws, and he could also make his reports in the Transvaal, if he desired to do so, so long as he did not hold himself out as practising in the Transvaal."

I think we may fairly take it that these are the questions, and the only questions, upon which the Institute of Chartered Accountants requires to be satisfied. There has not been time enough to receive a reply to our letter, but I have every hope that the official reply will show that these misunderstandings have been cleared away, and that the Institute recognises that the Transvaal Society of Accountants is working with but one end in view, and that is the consolidation and advancement of our profession in this country. We may not be following lines which are possible, or even desirable, in the Old Country, although I, personally, do not admit that this is the case. One thing, however, is certain, and that is that in this, as in so many other departments of public affairs, we must know our own business best, and we have every right to manage it ourselves.

I think I have now said enough as to the contests in which the Council have been engaged in your interests during the past year, and I sincerely hope that you will see your way to express approval of their actions, and will feel that they have safeguarded your rights in every possible way.

#### *Examinations.*

Turning now to a more pleasant part of the Council's work, as you will see from the Report, the Examination Committee was appointed in April 1905, and in December

last we held our first examinations. I think, gentlemen, that the result of the work of that Committee of the Council should give you unalloyed satisfaction. Personally, although much interested, I was unable to give the amount of time to that Committee work that it deserved, but the more active members of that Committee deserve, in my opinion, your most cordial thanks. The books chosen for the examinations were suitable, the papers set excellent, and the result of the examinations, in my opinion, highly satisfactory. As is stated in the Report, out of nine candidates for the Intermediate Examination five satisfied the examiners and the Council, and of the nine candidates for the Final Examination five were also successful. In this latter case the Council were, I think, justified in applying a somewhat higher standard to the papers sent in than they did in the case of the Intermediate Examination, and special stress in both examinations was laid on the marks obtained in the accountancy subjects. We are accountants, gentlemen, first and foremost. By our proficiency in accounts we shall be judged, and however useful and even necessary a knowledge of law and of other subjects, with which we may be brought into contact, may be, these subjects cannot be said to be essential to our work as knowledge of and proficiency in accounts certainly are.

It was not to be expected that at first examinations like these the percentages obtained would be exceptionally high, and it was also very obvious from the papers sent in that the candidates had had little, if any, experience of examinations. Speaking for the accountancy papers, and I have little doubt that a similar remark applies to the legal papers, it does not seem to have occurred to the candidates that in examinations, as in their actual professional work, the form in which the answer to a question is stated has an importance only second to the correctness of the answer. I hardly noticed a single instance, and I perused a number of accountancy papers, in which a candidate appeared to have asked himself not merely, "Can I answer this question?" but the further query, "How can I answer it best?" And I know that, bearing the special circumstances of these examinations in mind, leniency was shown by examiners in marking candidates in cases where questions were badly answered, but where it was obvious that the candidate, to use a vulgarism, "had got hold of the right end of the stick."

All things have a beginning, gentlemen, and I have little doubt that the quality of the examination papers sent in will steadily improve in future examinations.

#### *General.*

I have now dealt with the more important matters dealt with by the Council during the past year, and do not propose to dwell upon points of less importance, or point



merely affecting individuals; but in several instances I may say that we have exercised the disciplinary powers granted us under the Ordinance, and in each of them the Council's action has been taken in the sense in which it was intended, and their recommendations have been loyally assented to by the members affected.

I have great pleasure, gentlemen, in moving the adoption of the Council's Report and Accounts. (Applause.)

Mr. C. H. Hayward, in seconding the motion, said they were indebted to Mr. Pim and the Council for the careful attention they had given to their interests during the last twelve months, and he thought that they might congratulate themselves that the first year of the Society had shown strides they could hardly have expected to see. The financial position seemed to be entirely satisfactory. They recognised that a considerable sum had had to be expended in initial fees, but the current income seemed to be entirely satisfactory. (Hear, hear.) The main feature in Mr. Pim's remarks appeared to be those legal matters which had claimed the Council's attention during the year. He did not know that they could express much opinion on them, though it was evident that their Council had approached these matters in a competent and proper manner. (Hear, hear.) These were details and matters which they could only leave to their Council. He would, however, like to mention one or two points for the purpose of gaining information. The first point was the question of the funds. There was a large amount of funds standing to their credit, but there was no mention made in the Council's Report as to any intention they might have as to the disposal of this money. He quite saw the necessity of retaining a substantial surplus in hand, but he rather expected to have seen some reference in the Report as to the proposition to establish a library, or something of that sort, to which members could have access. He thought if such a library could be established it would be useful to members. He was also under the impression that the annual report and Balance Sheet should be submitted to the members a few days before the meeting took place, but he saw that no provision was made for that in the bye-laws. He thought it would be useful to have these reports of accounts circulated to the members before the meeting, so that they could discuss them intelligently. There was also in the Ordinance some provision that members of this Society should be restricted a little, though not too rigorously, as to their occupation. The idea was that an accountant should not carry on certain businesses which were not compatible with the business of an accountant. He thought that was a matter which ought to receive consideration. He thought there was a case

in their minds where one gentleman who was registered as an accountant and practising as one, was also acting as an agent for pickles and jams, &c. (Laughter.) One thing they would all have noticed during the past year—namely, that a tremendous lot of attention had been directed to the Transvaal accountancy profession. This registration Ordinance of theirs had been a great feature all over the world in accountancy matters. Special reference had been made as to the enormous strides taken in the Transvaal in obtaining this Ordinance, and strides were being made as to the registration of accountants all over the world. There was a very much better feeling between the different Institutes in England, and he thought that before very long there would be something done in England in the same direction. (Hear, hear.) In Australia they were taking action on the same lines. Large numbers of young men in the Transvaal were very keen on passing the accountant's examination. He had great pleasure in seconding the adoption of the Report and Accounts, and he thought their thanks were due to the Council for the dignified and most satisfactory manner in which they had conducted the business of the Society. (Hear, hear.)

Mr. Taaffe suggested they should communicate with the various adjoining Colonies to bring about unanimity on the question of witnesses' fees. As regards a library, he thought they might possibly engage a room at the Johannesburg Library, or with a Society in town which had already started a library.

The motion was then put to the meeting and carried unanimously.

The Chairman said the investment of their funds had not been forgotten, and the library question had also been discussed. At present the matter was in abeyance, as some arrangements, which they had proposed to make, were not approved of by a section of the Council, but he could assure the members that this library matter was certainly one to which a considerable amount of attention had been paid, and which he trusted would take definite shape before long. With regard to the Report he had to apologise for not having circulated it at an earlier date, which had been due to their having other calls on their time of a very onerous character. With regard to professional etiquette, he had alluded to it in the Report. This matter had received the attention of the Council, and whatever measures the Council had taken had been received in the spirit they were intended, and loyally assented to by the persons affected. The Council had every reason to congratulate themselves on the way in which their careful attempts to point out where breaches of professional etiquette had occurred had been received. With regard to witnesses' fees, it was never intended that

this matter would be dropped now. Of course, they would pursue it, but they were faced with a very considerable difficulty, and which would, no doubt, account for their not having made more progress in this very important matter.

The election of the Council for the ensuing year was then proceeded with. Eleven members of the retiring Council, viz.:—Messrs. Howard Pim, Alex. Aiken, Samuel Thomson, Robert Baikie, John G. Carter, Jno. Dougall, Frederick Wm. Diamond, Frederick Richard Lynch, John Hastings Muir, Charles Stuart, and Thomas Watson offered themselves for re-election. Three other nominations had been received, viz.:—Messrs Somerville Craig Carruthers, Alfred Williamson, and Henry Gordon Leete.

The eleven retiring members were re-elected, and Mr. S. C. Carruthers was elected to fill the vacancy.

Mr. P. Whiteley and Mr. F. A. Stokes were reappointed Auditors. Their remuneration for the past audit was fixed at thirty guineas each.

Mr. Sheppard asked if it could be arranged for any one member of the Council to represent the interests of the outside districts, such as the East or West Rand.

The Chairman asked Mr. Sheppard to write an official letter to the President on the matter.

Mr. Scott proposed a hearty vote of thanks to the Chairman and other members of the Council for the valuable services they had rendered. The proposal was carried by acclamation.

The Chairman replied on behalf of the Council.

Mr. H. J. Roberts asked for further information regarding an item in the accounts, which the Chairman explained.

The meeting concluded with a vote of thanks to the Chairman for presiding.

## Reviews.

### Woollen and other Warehousemen's Accounts.

By JOHN MACKIE.

(“THE ACCOUNTANTS’ LIBRARY,” Vol. XLIII.)

London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 3s. 6d.

So far as the financial books are concerned, there is not much that is particularly distinctive in the accounts of

warehousemen, either in the woollen or other allied trades; but if the business is properly organised a number of subsidiary or auxiliary records are desirable, and these naturally are designed to meet the special requirements of the case. Although therefore, perhaps, at first sight it might have been thought unnecessary that a volume upon this subject should be added to the “Accountants’ Library” series, a study of the handbook now before us will speedily suffice to dispel that impression. Mr. Mackie deals with his subject clearly and concisely, and illustrates his explanations at all needful points by the aid of useful examples, which have the advantage of being fully worked out instead of being merely in skeleton form. Something might perhaps with advantage have been added on the subject of the Slip System as applied to warehousemen’s accounts, but as that is to form the subject of an independent volume, the omission will not be felt.

### The City of London Directory.

1906. Price 12s. 6d.

We have received for review a copy of the thirty-sixth annual edition of the above directory.

All the information concerning the City Corporation, the Committees, the City officials, the Livery Companies, and the London County Council, for which the Directory has been for so many years noted, is given as usual.

Much of the exclusive information for which the work is celebrated it is impossible to obtain before March, and in consequence of this the work is not published earlier in the year; there is, however, another advantage in the date of publication in that it enables the editor to record as far as possible the Christmas and New Year’s removals, a distinct advantage to those having, or desiring to have, business relations in the centre of the world’s commerce. Moreover, the date of publication has enabled the editor to record all the Government changes brought about by the formation of the new Administration, an invaluable feature, inasmuch as other annual works of reference went to press too early for the appointments to be notified. The present edition has been carefully revised, numerous additions have been made, and great pains have been taken to render it accurate in every section.

This volume is the thirty-sixth annual issue, and will be found to contain all the old and valued information which gives it a high and unique position as a book of reference.

## Meetings for the ensuing Week.

**Tuesday**—BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Lecture, "The Accounts relating to the Formation and Reorganisation of Limited Companies," by Mr. J. Chapman, A.C.A. The meeting will be preceded by tea, at 6 o'clock, at the Library, 8 Newhall Street.

**Wednesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Finance Committee, 12.30 p.m.; Council meeting, 2 p.m.

LONDON CHARTERED ACCOUNTANT STUDENTS' SOCIETY. Joint Debate with the Law Students' Debating Society, "Officialism: its Dangers to Professional Men," at the Hall of the Institute, Moorgate Place, E.C.; 7 p.m.

KINGSTON-UPON-HULL CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Fraudulent Dealings with Property, with Special Reference to Bankruptcy," by Mr. R. W. Aske, LL.D., at the Hall of the Incorporated Law Society, Bowlalley Lane; 7.45 p.m.

**Thursday**—LIVERPOOL CHARTERED ACCOUNTANTS STUDENTS' ASSOCIATION.—Ten Minute Papers (with Discussion), at the Library, 3 Lord Street; 6 p.m.

## Personal.

MESSRS. S. BARNES BRYANT & Co., Incorporated Accountants, announce that they have removed from 10 Philpot Lane to 16 Eastcheap, E.C.

MR. J. M. FELS, F.S.A.A., has removed from 85 Gracechurch Street, to 7 Union Court, Old Broad Street, London, E.C.

MR. CECIL H. LEPINE, A.C.A., announces that he has entered into partnership with Mr. WALTER LANGTON, A.S.A.A., and that they will carry on practice as Professional Accountants at 12 Coleman Street, E.C., under the style of LANGTON & LEPINE.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Mar. 23rd, was 179, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 88; Deeds of Arrangement registered, 91. The respective

numbers in the corresponding week of last year were: Bankruptcies, 106; Deeds of Arrangement, 87—total, 193; being a decrease of 14. The total number of commercial failures recorded during the 12 weeks of the present year is 2,060; the total number recorded in the corresponding 12 weeks of last year was 2,246, showing a decrease of 186.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Mar. 23rd, was 147. The number in the corresponding week of last year was 195, showing a decrease of 48. The total number filed during the 12 weeks of the present year is 1,889; the total number filed in the corresponding 12 weeks of last year was 2,082, showing a decrease of 193.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Mar. 23rd, amounted to £4,826,068, by way of addition to £1,367,674, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,206,281, showing an increase of £3,619,787. The total amount registered during the 12 weeks of the present year was £20,112,086 (in addition to the issues in previous years by the same companies), as compared with £21,451,653 for the corresponding 12 weeks in 1905, showing a decrease of £1,339,567.

## The Profession in Scotland.

### Glasgow Chartered Accountants Students' Society.

#### Reconstructions.

BY GEORGE ALEXANDER TOUCH, C.A.

A LECTURE delivered to the members of the above Society on 22nd February 1906.

(Continued from p. 388.)

#### PART II.

#### SOME TYPES OF RECONSTRUCTIONS.

I have now given a brief, and, I fear, a somewhat prosy description of some of the various causes which render reconstructions necessary, and of the machinery provided by

a thoughtful Legislature for enabling them to be carried out with profit and advantage to the interests concerned, including those of accountants and solicitors. I propose to supplement these observations by taking a few typical cases and tracing, in the merest outline, the practical procedure, in its business rather than its legal aspects, with which the accountant is more particularly concerned in relation to these operations.

*I.—Reconstruction for Purposes of Extension.*

Let us take, first, the case of a company acquiring the business of another company, or, owing to the extension of its own business, desiring to rearrange its Capital Account and introduce further money. Such instances may be classified as reconstructions for the purposes of extension, and they are generally confined to successful companies.

The first essential is to prepare a scheme of reconstruction, setting forth the proposed rights and interests in the new company to be allocated to proprietors of the existing company, and the further securities to be created to provide for the purchase of the other business or the introduction of the additional capital required. The equitable apportionment of capital, even in a comparatively simple case of the kind here described, may require the exercise of some financial ingenuity. Some degree of give and take is almost invariably called for, and a sense of perspective and proportion is a necessary qualification for the preparation of a scheme that is to be successful.

In the case of the purchase of the business of another company, the registration of a new company to acquire both businesses—the old and the new—may not be required if the constitution of the existing company is sufficiently comprehensive to include a power to acquire the business and goodwill of another company. In such circumstances the existing company, and not a new company, becomes the purchasing company.

After the scheme of arrangement has been prepared and passed by the directors, it is necessary, in a case of this sort, for the two boards to enter into an *ad referendum* contract, setting forth the terms of purchase and sale. Meetings of the shareholders of the respective companies are then called; the terms of purchase and sale are explained; and, if they prove acceptable, resolutions are passed approving the sale and authorising the directors to carry the terms of the agreement into effect.

In the case of the purchasing company further resolutions will probably be necessary to increase the capital so as to provide the share consideration payable to the vendor company. An increase of capital is often authorised by an ordinary resolution of the shareholders. The question whether a special resolution is necessary again depends entirely on the provisions of the articles of association.

When the sale has been carried through, and the purchasing company has issued to the vendor company the share consideration to which it is entitled under the sale and purchase agreement, then, and not till then, the vendor company should pass the necessary resolutions placing itself in voluntary liquidation for the purpose of distributing the shares, in terms of the arrangement previously arrived at.

As the assets of the vendor company come into the hands of the liquidator in the form of securities of the purchasing company, and the basis of distribution is already known and regulated either by the articles of association, or by resolutions of the shareholders, the distribution can be expeditiously carried out, and there is no prospect of difficulties with dissentient shareholders, because the 161st Section of the 1862 Act does not apply. In such circumstances the dissentient shareholder cannot compel the liquidator to purchase his interest. He must take up the share consideration attributable to his holding in the vendor company; or, if he does not care to do so, he forfeits all further interest.

The duty of a liquidator in a rearrangement of this nature is a comparatively simple one, and the work is almost entirely of an executive character. He prepares a scheme of distribution of the assets in specie according to the terms which were sanctioned prior to the winding-up. If the shares in the purchasing company have been allotted already to the vendor company, transfers must be prepared and executed giving each shareholder the proportion of capital to which he is entitled. As a general rule, however, it is provided in the agreement for sale that the shares shall be allotted either to the vendor company or to its nominees. In this case the liquidator hands to the purchasing company a request that the allotment may be made direct to the shareholders of the vendor company, as the nominees of that company, in accordance with a schedule which he submits, setting forth the amounts to be allotted to each respectively. He thus avoids the necessity of preparing separate transfers and of paying the usual transfer duty. The agreement of sale and purchase, and a supplemental agreement by the liquidator setting forth the names and holdings of the parties to whom the shares have been allotted as the nominees of the vendor company, are registered with the Registrar of Joint Stock Companies.

A reconstruction of this nature can be carried through expeditiously, provided the general body of shareholders are in accord with the scheme. After the distribution has been made by the liquidator the final meeting can be held and the liquidation closed. One naturally dives into one's own experience for illustrations of what can be done where everything is on a business basis and there are no

legal obstacles or complications. Perhaps I may be permitted to cite the case of the Western Railway of Santa Fé, where I acted as liquidator jointly with Mr. Essex E. Reade, the very able representative of Messrs. Baring Brothers in South America. In this case we were able to distribute securities and cash to the amount of £768,750 within a month from our appointment as liquidators, and the liquidation was finally closed a few weeks later.

## II.—*Reconstruction of Companies in Difficulties.*

Let us next consider the very ordinary case of a company in difficulties which call for a rearrangement of its capital, involving, as such rearrangements almost invariably do, the alteration or modification of the rights of the various classes of its shareholders, and perhaps even of its debenture-holders. In this case the procedure is somewhat different.

To begin with, the company is often in liquidation before a scheme of rearrangement can be discussed or agreed to. The preparation of a scheme of this nature requires very careful consideration. The procedure is regulated by the Court, and if there is likely to be opposition by any of the interested parties they can so prolong the proceedings as to seriously embarrass the prospects of success. It is therefore of the utmost importance that the scheme should be one which will commend itself to the general sense of what is fair and equitable as between the various interests concerned.

### (1) *The Conditions under which such Reconstructions are Feasible.*

It may be regarded as a general rule that, where a company is in liquidation and it is desired to reconstruct it, this can only be done successfully in two classes of cases:

First—If the business can live and earn profits within the limited means at its command; or

Second—If there is a fair prospect of its proving remunerative on the introduction of further working capital, and such capital can be obtained by a public or other issue, or the shareholders may be relied on to subscribe it themselves.

Where the shares are widely distributed, and the prospects are not altogether funereal, it may generally be assumed that a large proportion of the shareholders will respond to the demand for further capital, provided the addition which they are asked to make to their original investment does not exceed 20 or 25 per cent. of the new security. That is to say, the holder of a fully-paid share in the company which it is proposed to reconstruct will generally accept a share of £5, £4 paid, and with a liability of £1 in the new company, in lieu of his original holding, rather than risk the loss of the whole or the greater part of his investment in a forced liquidation.

The acceptance of shares with a liability is occasionally underwritten, and any which are not taken by the shareholders entitled to claim them are subscribed for by the underwriters, so that the necessary capital is secured. No legal decision has, however, yet been obtained as to the validity of this course of procedure, which is questioned by some of the best authorities.

I fear the willingness of shareholders to follow their money, once at least, is sometimes taken advantage of for the purpose of effecting reconstructions of concerns that were best allowed to perish. It is chiefly amongst mining companies that this abuse prevails.

### (2) *Ascertainment of Loss.*

It may also be taken for granted that a considerable amount of the original share capital has been lost, and that the adjustment of the loss between the various classes of shareholders—that is to say, the proportions in which the capital of each class is to be reduced, and the variation of dividend rights consequent on such reduction—is a controversial point. Before any progress can be made with the preparation of a scheme, the accountant must satisfy himself as to the provision to be made in respect of this loss. The amount can only be ascertained by a valuation of the assets and undertaking.

The ascertainment of this amount presents many problems. It is easy to say that it can be arrived at by a valuation of the assets and undertaking. But such a valuation requires expert knowledge, whilst the knowledge of those to whom the valuation is entrusted is sometimes not very expert after all. In all probability the greater portion of the loss or depreciation of capital arises in connection with such assets as goodwill and patents, and there is room for wide difference of opinion regarding their values.

The average earning power, under fair conditions, has to be considered and partially estimated, and such estimates probably vary materially from those made at the formation of the company. Whatever may be the theoretical attractions of a rigid figure, the practical needs of the situation probably require concessions to the views and claims of different classes of proprietors. My experience is that shareholders prefer a policy which is thorough to one which only tinkers with the depreciation or loss of assets, but they may justifiably rebel against attempts to overdo a reduction in values.

### (3) *Apportionment of Loss.*

It will thus be seen that the estimate of loss cannot be regarded as governed by any given rule; neither can its equitable apportionment amongst the shareholders, from a financial or commercial point of view, be so governed. Each case must be judged on its own merits. Although

the preference capital of a company has a preferential right to dividends, and very often to repayment of capital, before any return is made on the ordinary shares, it cannot be accepted as a universal maxim that all the loss should be thrown on the ordinary shareholders of a company, to the full extent to which the ordinary capital will suffice to meet it, before any deduction whatever is made from the preference shares.

I am no advocate of interference with preference rights, except for the good of the holders, and with their consent, and under a scheme which, viewed in true financial perspective, shows a fairer prospect than is revealed by a mere mechanical exercise of legal priorities. A scheme, moreover, must be fair all round. The junior securities often represent, to a large extent, the value of trade connections, perhaps partly of inventions or processes, but chiefly of name, association, and personal influence—in short, the goodwill of a business. This may have depreciated seriously for the time being, but there is probably still some value appertaining to it. If the business is resuscitated and worked on proper lines, this value may be an increasing one. It would therefore often be unfair to allocate the loss in such a way as to extinguish the ordinary share capital and place the preference shareholders in the position of becoming the beneficial owners of all reversionary rights and profits.

The tangible assets must also have suffered in value. By adjusting the loss with due respect to the equities of the position, rather than on a pedantic observance of technicalities, it is probable that a scheme may be evolved which will preserve better value for all concerned than a realisation could achieve for any one class; and such a scheme would deserve the support of all classes, even if it appeared to call for some sacrifices from all. Should the company afterwards be placed in a good, sound, and revenue-earning position, the securities of all classes will probably appreciate in value, and thereby recoup to the proprietors a portion of their lost capital.

I have generally found that a scheme which appeals to the sense of fairness, which is always predominant in any large body of shareholders, may count on receiving sufficient support to overcome the opposition of the narrow-minded and pedantic. For this reason I would much rather deal with a large body of shareholders than a small one. The opposition of the man who, like the stage Irishman, is "agin" everything, is submerged by the sanity of the multitude in the former case, but it may be a very troublesome factor in the latter.

(4) *Total Elimination of any Class Rarely Necessary.*

In some cases, where an inflated value has been placed upon such intangible assets as goodwill and patents at the inception of a company, it may be necessary to cut it out

entirely, with a corresponding elimination of the capital issued in respect of it, owing to the fact that the goodwill or patents or processes, or whatever has been the nominal justification for the issue, have proved of little or no value, or that the company, since the date of its formation, has adopted other methods of carrying on its business.

It is not very often that a whole class of shareholders is wiped out in a scheme of reconstruction, but there may be cases where it is desirable. It was done recently in the case of a company in whose reconstruction I was interested. The whole of the vendors' capital was cancelled under the scheme of reconstruction, but they were given a reversionary interest in any surplus profits which might remain after substantial dividends had been paid on the prior securities. This deferred or reversionary interest was represented by the creation of deferred shares of a nominal amount, so as not to affect materially the capitalisation of the company.

(5) *Difficulty of Eliminating an Entire Class of Shares.*

It is difficult to deal with a reconstruction in this way unless the particular class of shares to be obliterated is held either by one person, or in a very few hands. Considerable difficulty would probably be experienced in carrying out a programme of this character with regard to the securities of a public company where the shares were well distributed. It would naturally provoke the opposition of the great body of the proprietors who were to be excluded from any very tangible benefits under the scheme.

We went very near this course, so far as the deferred shareholders were concerned, in the reconstruction of the Welsbach Incandescent Gas Light Company, Lim., which took place two or three years ago. I was one of a committee appointed by the shareholders to investigate and report on the affairs of the company. One of the chief difficulties experienced by the committee was in settling the value of the intangible assets—they were mostly intangible, but they were not on that account lacking in substantial value. The total share capital of the company was £3,479,539, with a small amount of debentures. The assets stood at £3,503,859, represented chiefly by patents and goodwill. We wrote the assets down to £1,245,457, a reduction of no less than £2,258,402.

The original capital was divided, in unequal parts, into preference and ordinary stock and deferred shares. To meet the reduction in the book value of the assets we cut down the preference stock by 35 per cent., the ordinary stock by 75 per cent., and the deferred shares by 95 per cent. The reduced capital of the preference shareholders was given partly in preference and partly in ordinary shares, so that the holders should receive a certain

preferential revenue with a chief share in all surplus profits. The reduced capital of the ordinary stockholders and deferred shareholders was given entirely in ordinary shares. The company has now only two classes of capital instead of three.

The deferred shareholders probably recognised that their interest was practically gone. I do not think that many of them seriously disputed the justice of the scheme, although it met with some active opposition in each class. The real difficulty with the deferred shareholders lay in getting together a sufficient number to constitute a quorum for the class meeting to authorise the scheme. There was no great reason why they should concern themselves about the success of a plan which only gave them a shilling in the pound. We had literally to go out into the highways and hedges and compel them to come in.

#### (6) *The Quorum for a Class Meeting.*

The quorum required to constitute a class meeting is sometimes fixed by the regulations at so high a proportion of the whole class that it is very difficult to get it together, even in cases where attendance by proxies may be counted for the purpose. Apathy is even more dangerous than hostility. Hostility often helps. A fight always attracts a good attendance. The hostile man comes to oppose, and his presence goes towards making a quorum. The meeting constituted by his aid and that of his supporters may carry a resolution which, in their absence, would have been lost for lack of a quorum. I have sometimes derived much quiet satisfaction from the spectacle of an opponent assisting me in this way.

#### (7) *Valuations often Necessarily Arbitrary.*

The value of £1,245,457 placed on the assets in the Welsbach reconstruction was necessarily a somewhat arbitrary one. It was the subject of much discussion, and, in substance, its selection was a compromise. Great as the reduction was, much might have been said in favour of making it greater. If, however, we take into account the recuperative powers of a large commercial business such as that, it will, I think, be found that the new capitalisation was justified by the earning powers of the company. That, after all, is the only real factor in assessing the value of an undertaking of this sort.

The valuation of intangible assets is always a matter of considerable difficulty, giving rise to wide divergence of opinion. In a great many instances the value at the commencement of the company is based entirely on estimates, but the authors of all estimates are fallible, unless Glasgow accountants form an exception. Unseen difficulties may develop, more economic methods of manufacture may create an unexpected competition; the esti-

mates are not borne out, and considerable depreciation occurs.

#### (8) *Patents.*

The gradual shortening of the life of a patent is an element which has also to be taken into account. It by no means follows that the capital which is created and issued on the strength of the acquisition of patent rights loses the justification for its existence when the patents have expired. It ought to be the policy of every such company to utilise the period of protection afforded by the patents in perfecting its organisation, strengthening its hold on its particular branch of trade, and ~~so developing and consolidating the commercial side of its business,~~ that, on the expiration of the patents, there may be no real diminution of values.

As an example of what may be done in this way, reference may be made to the Dunlop Tyre Company. There is nothing to admire in the capitalisation of that company. It was so heavily over-capitalised at its inception that anything like an adequate return on its capital could not be looked for. But the business of the company is, nevertheless, a very good one, and it is commercially progressive, with the result that, although the Dunlop patents have expired, the Dunlop business is as good, if not better, to-day than when it was protected.

Patents are often excellent things as adjuncts to an existing business. Great numbers of them are so used. That is their proper sphere. But, as a general rule, they form a poor basis for a new business, although there are notable exceptions. Manufacturers constantly find patents useful for the development of their businesses, but the investing public seldom hears of these patents. The business first—the patents afterwards: that is the natural order. Those who put money into companies formed for the express purpose of exploiting particular patents nearly always lose it. The greater the apparent merit of such a patent the more likely is its history to be associated with financial loss. Owing to its obvious merits, people are tempted to speculate in it. I use the word "speculate" advisedly. The term "invest" would be out of place. Patents may be regarded in much the same way as mines. They may prove to be good speculations, but the majority of them are financially worthless, so far as the investor is concerned. The few that become of proved value are seldom a source of much profit to the pioneer. It is usually about the third owner who reaps the harvest.

#### III.—*Reconstructions which Extinguish the Entire Rights of a Class.*

I have already indicated that it is an unusual thing to endeavour to wipe out the whole value attaching to an entire class of shares in a reconstruction. It is seldom

good policy, or good finance, even if it is good law. The object of a reconstruction is to maintain and develop values as a going concern, where a forced realisation might leave even the capital of the preference shareholders unrepresented in whole or in part. The rights of all parties should therefore be considered, and the loss or depreciation should be distributed on an equitable basis over the various classes of securities.

There was a case before the Courts recently—it may be heard of again—where I was interested on behalf of holders of founders' shares which the issuing company sought to blot out without any compensation to the holders. I refer to the National Bank of China, Lim. The capital consisted of £1,000,000, of which £999,250 was in ordinary shares of £10 each, entitled to a non-cumulative preferential dividend of 8 per cent., and £750 was in founders' shares of £1 each, entitled to half the surplus profits. The whole of the ordinary capital has not been issued, nor is it fully paid up. The bank has been dividend-paying, but the dividends have been small, and it has not, so far, established itself as a conspicuously successful institution, although many influential Chinese gentlemen are concerned in it. Its compradore is Mr. Fung Wa Chun, and it includes amongst its directors such distinguished celestials as Mr. Chan Kit Shan and Mr. Chan Tung Shan.

The capital was in great measure subscribed in England, and transferred to the East when the exchange was about 3s. to the dollar. In 1904 the rate of exchange had fallen to about 1s. 8d., and the Bank believed that this rate had come to represent the true value of the dollar, and that they had to deal with a permanent loss of capital. They accordingly submitted a scheme to reduce the paid up ordinary capital by £3 a share, and to cancel the founders' shares, paying the holders £1 a share out of profits. It cannot be denied that the small amount of founders' capital is no longer represented by available assets, but the theory that capital unrepresented by available assets may be cancelled is one the merit of which, as Captain Cuttle would say, lies in its application.

If the company's contention is upheld, it would mean that the holders of any small body of capital represented by deferred, or management, or founders' shares in a company created for the purpose of conferring certain special rights or participation in profit, would be liable to have such rights forfeited, perhaps without compensation, or, what is practically the same thing, on repayment of the small nominal face value of their shares, if at any time there was a trifling loss exceeding the microscopic capital sum to which such rights were attached.

I am not aware of any case in which this view has been upheld by the House of Lords, so that the law on the

subject cannot be regarded as settled. There is much need for a final decision as to whether it is permissible to wipe out an interest in future profits on the ground that the present value of these profits is a negligible quantity. The Judge of first instance who sanctioned the arrangement to which I have referred thought there was no hardship in this, but he did not stop there. He gave reasons for his opinion pertinent to the particular case, one of which was that he thought he might fairly take the value of the dollar at 1s. 8d. as likely to be permanent. But alas for the fallibility of estimates, the exchange has now risen to 2s.

The principle involved is one of importance to trust companies and other investors, and Scots folk are always ready to battle for a principle. Where the loss is less than the total capital of the junior security the method of applying such loss to the reduction of capital strictly in the order of ranking does no great harm beyond leaving a lop-sided Capital Account, as in the case of Watney, Combe, Reid & Co., where the deferred ordinary stock was reduced the other day from £3,185,410 to £796,353, a reduction of 75 per cent., to meet capital losses, but was left with all its rights in surplus profits exactly as before. It matters little whether your dividend rights are attached to £100 or to £25, if your voting rights are not impaired. In the case just cited the voting rights of the stockholders were preserved intact by granting to the holder of every £1 of deferred ordinary stock four votes instead of the one held previously. But if an entire issue is wiped out a very different set of considerations present themselves.

It is claimed that there is a precedent for the National Bank of China method in the case of the London and New York Investment Trust, where the loss of capital was provided for on the simple plan of first cancelling the class of shares of lowest rank (what may be called the tail-enders) and then, in so far as that was insufficient for the purpose, in reducing the next class. This had the result of extinguishing the founders' shares of that company altogether, and of reducing the ordinary shares by 50 per cent., leaving the holders of the reduced ordinary capital to the enjoyment of all their own rights, plus the reversionary rights formerly belonging to the founders. The reduction was sanctioned by Mr. Justice Stirling, but the case was not very strenuously contested, the prospects of any revival of values and increase of profits, such as would entitle the founders' shares to a dividend, being wholly remote.

#### IV.—A Rearrangement for getting Rid of Uncalled Liability.

You may be interested in an illustration of a rearrangement of capital, without the intervention of the Court, for the purpose of getting rid of a liability on the shares.



The Trustees, Executors and Securities Insurance Corporation, Lim., of which I have the honour to be chairman, had a capital standing at the aristocratic figure of a million guineas in 200,000 shares of five guineas each. These shares were paid up to the extent of £2 5s., leaving a liability of £3 a share.

This liability had a prejudicial effect on the price of the shares. People have been hit so often by uncalled liabilities that many investors now refuse to have anything to do with securities that are not fully paid up. Executors will seldom hold them, and, as holders die and their shares come upon a market where there are often no buyers, the price is bound to suffer, to the detriment of the deceased's estate. In this case we could not write off the uncalled portion under a reduction of capital, because there was an issue of irredeemable debenture stock specifically secured on the uncalled capital. We could only induce the debenture-holders to release this charge by agreeing to substitute paid-up capital for uncalled capital.

But the shareholders had no wish to pay up £3 a share, or £600,000. So we split each £5 5s. share, £2 5s. paid, into two shares of £2 12s. 6d. each, £1 2s. 6d. paid and £1 10s. unpaid; one share being made a 4½ per cent. preference share and the other remaining an ordinary share. We then applied £75,000 of surplus profits in paying up 7s. 6d. a share on the new ordinary shares, making them £1 10s. paid and £1 2s. 6d. unpaid. It was then arranged that any shareholder might have his new preference share (£1 2s. 6d. paid) sold for that amount, the proceeds being applied to pay up the remaining liability on his new ordinary shares. The result was that the holder of an old undivided share of £5 5s., with £2 5s. paid up, and an uncalled liability of £3, became the holder of a new ordinary share £2 12s. 6d., fully paid up. We then called up the liability of £1 10s. on the new preference shares.

The machinery seems a little complicated, but the immense majority of our proprietors took to it with much rapidity of comprehension, and the final outcome was simplicity itself. The whole of the uncalled liability was paid up, without any cost to the ordinary shareholders. Two years ago the market value of their shares was under £300,000. To-day it is over £500,000. The proprietors who benefit by that increased capital value have not been required to find a penny of new money. And yet we met with an organised though ineffectual opposition when carrying the scheme through, the most aggressive opponent being "A brither Scot"—an unchartered accountant—a native, I believe, of Paisley.

*V.—A Rearrangement to Secure an Increasing Reversion for the Holders of Junior Securities.*

I do not wish to weary you with successive illustrations. The variety of types of reconstructions and rearrange-

ments is great. But perhaps I may be allowed to cite one other case, again from experience, as it is a little out of the ordinary run of these things. I refer to a rearrangement of debenture debts to secure an increasing reversion for the holders of junior securities and shares, where a liquidation and repayment of the various charges in the order of their ranking would have had a prejudicial effect on such issues.

The method was adopted in connection with the sale of the Central Bahia Railway to the Brazilian Government. This railway was built and equipped by an English company. In common with several other South American railways, formed about the same time, it was built under a guarantee of income given by the Brazilian Government. But the guarantee was for a limited period of thirty years, and in 1901 it had only seven more years to run. The traffic development had been disappointing, and there were no grounds for assuming that, during the remaining seven years, the earnings would increase sufficiently to provide a revenue which would meet the fixed charges.

After considerable negotiation the Brazilian Government offered to purchase the railway for the sum of £1,135,000 or thereabouts, payable in what were known as "4 per cent. railway guarantee rescission bonds." The bonds at their face value were sufficient to repay the outstanding debentures of the railway, amounting to £711,700, and to allow a substantial return on its capital stock of £671,260. But if the rescission bonds had been realised for the purpose of repaying the debentures and liquidating the company's capital serious loss must have been incurred, as the average market value of similar Brazilian Government bonds at that time was only about 66¾ per cent. The sum produced by the sale of £1,135,000 of these bonds, even at that price, would have left a very small surplus for the holders of the capital stock after repaying a debenture debt of £711,700, while you can well imagine the effect on the market price of an endeavour to sell a block of that magnitude.

My firm were accordingly instructed by the board to formulate a scheme under which the whole of the rescission bonds, receivable as the purchase-price of the railway, were to be vested in the directors of the company as trustees for the benefit of all concerned. The scheme provided that the various classes of debentures, of which there were three, and the stockholders, should leave their scrip with the trustees on certain terms and conditions. Against this scrip the trustees issued two classes of certificates, namely, "A" certificates, amounting to £960,575, ranking first for 4 per cent. interest, in exchange for the debentures, and "B" certificates, amounting to £671,260, entitled to the surplus, in exchange for the capital stock.

The holders of the three issues of debentures were given "A" certificates in proportions arrived at on a careful and delicate adjustment of the value of their respective positions as regards both capital and income. They were thus furnished with security for capital, and permanent safety of income, whereas, formerly, their revenue was only reasonably secured for a further period of about seven years. The surplus in capital and revenue accrued to the "B" certificate-holders.

The terms of the trust provided that, when the Government redeemed their bonds, as they were bound to do under the sinking fund provisions attaching to the issue, the proceeds were to be applied in redemption of "A" certificates, by purchase or drawings, whichever might be cheaper, thereby increasing the reversionary interest belonging to the holders of the capital stock from year to year. This trust has now been in operation for four years, £117,921 of the "A" certificates have been redeemed, and a considerable value has accrued to the stockholders, while it is expected that, as time goes on, the accretion of value will become progressively larger.

The scheme differs materially from the Tontine method, because those who drop out are paid out, but the benefits for those who remain are similar in kind because the value of their reversion is constantly increasing.

The expenses of conducting a trust of this nature are small, and the benefits to be derived by the stockholders are great, whereas if the company had been placed in liquidation for the purpose of realising the rescission bonds and distributing the cash according to the rights and interests of the various holders, it must inevitably have resulted in serious loss to the shareholders, if not also to the holders of some of the junior debenture securities.

#### VI.—*Concluding Remarks.*

Well, gentlemen, we have covered a good deal of ground to-night. Perhaps you may think the area too extensive, but there are still aspects of the subject that have been left untouched. I do not expect you to have absorbed all that has been said while it was being said. You will doubtless give it further study. One of my partners, who read my manuscript, remarked that the only criticism he had to offer was that it was likely to produce a sort of mental indigestion on the part of the student who endeavoured to absorb it all at one sitting. I do not know whether you will regard this criticism as a compliment or the reverse. I acknowledge that what I have placed before you to-night has been pieced together at odd moments, and in late hours, during a time of much stress, when business claims have been unusually heavy, and there has been serious illness at home. This must be my excuse for the more manifest imperfections of the lecture, which would

have been even greater if another of my partners, Mr. Andrew Wilson Tait, had not very kindly aided me with some notes on the subject, the use of which I gratefully acknowledge, while Mr. George May Simmonds, a member of the firm of Messrs. Slaughter & May, the well-known company solicitors, has been good enough to read through that part of the manuscript relating to the machinery provided by law for effecting reconstructions, and has pronounced it, in the words of our own certificates, "to be properly drawn up."

In dealing with a subject of this sort one necessarily dwells on the means by which reconstructions are carried out. You can learn all about that side of the question from lectures and text-books. None of you can afford to neglect the information which these will give to you, if you are earnestly desirous, as I hope you all are, of taking a prominent position in your profession.

The highest value of the service of accountants does not, however, belong to work of a mere executive character, but to the creative part. If you wish to excel in your profession, and especially in that branch of it which we are discussing to-night, you must cultivate a constructive habit of mind. The power to destroy is common. As Lord Beaconsfield once said: "A fool can set fire to a palace." But the power to conserve and create is rare. You may all take legitimate pride in the fact that you are students of a profession whose work is largely of a kind that makes for the preservation and development of value and the prevention of insolvency. Nearly every business saved from liquidation by a reconstruction means a better value for its assets and a continuation of employment for those engaged in it.

The creative part which this involves—the part which each of you must thoughtfully work out for himself, with much study, in each case as it arises—is the most difficult, as it is the most important. No text-book can teach you how to hold a delicate and even balance between conflicting, and often hostile interests; how to reconcile the preservation of equitable reversionary rights with due respect for the maintenance of priorities; how to climb over, or tunnel under, or travel round the many obstacles, legal, commercial, financial, and often merely perverse, that beset the path of the reconstructor. These things you must evolve from some part of your own cosmos, assisted by experience, observation, intuition, and Scottish sagacity. Some aptitude for finance, natural or acquired, is, of course, a necessary portion of your equipment; but all the world knows that Scotsmen belong to one of the two great races who are most gifted in that respect. I feel, therefore, that in this Glasgow gathering I am probably addressing men who will take an active part in the successful reconstructions of the future. It has been a pleasure to me to put together the notes of this lecture for your consideration, and I sincerely trust that it may be of some small profit to you.

THE CHARTERED ACCOUNTANTS STUDENTS' SOCIETY OF LONDON.—We are asked to state that the Joint Debate with the Law Students' Debating Society on Wednesday, 4th April, will commence at 7 p.m. to meet the convenience of the Law Students, instead of 6 p.m., as previously announced.

THE return football match, under the title of "President's v. Vice-President's," between the teams from the offices of Messrs. Gane, Jackson, Jefferys, Wells & Co., and Messrs. W. B. Peat & Co., was played at Lake House Park, Wanstead, on Saturday last. At the previous meeting on January 6th the "Vice-President's" won by 4 goals to 3, but on this occasion the result was reversed, the "President's" team winning a fast and interesting game by 3 goals to 2.

THE CORNHILL MAGAZINE for April contains the customary instalments of "Sir John Constantine," by Mr. A. T. Quiller-Couch, and "Chippings," by Mr. Stanley J. Weyman. The series "From a College Window" comes to a conclusion with a meditation upon the real meaning of "Religion." In "The New House of Commons," Mr. J. H. Yoxall, M.P., recalling the famous picture of the first reformed Parliament, drawn by Mr. Tittlebat Titmouse, of Yatton, in Samuel Warren's "Ten Thousand a Year," gives the lively impressions made by the Parliament of 1906 upon a new member in the person of Mr. Titmouse's grandson. "A Journey of Surprises," by Mrs. Archibald Little, gives an account of travel in the scarcely explored Chinese province of Yunnan; while short stories are "Shadows of Degrees," by Mr. Arthur H. Henderson, and "An Easter Offering."

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### Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
" 21st " .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th " .. .. .	3%
" 28th " .. .. .	4%

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# The Accountant

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SATURDAY, APRIL 7, 1906.

[PRICE 6d.]

Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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**Leading Articles.**

**Profits and Dividends.**

THE case of *The Wemyss Collieries Trust, Lim. v. Melvill*, recently decided in the Scottish Courts, revives a matter of perennial interest to our readers—namely, the somewhat important distinction between profits earned and profits available for distribution. As our readers are aware, it has more than once been

decided that a company is entitled to distribute a dividend among its members when in point of fact, at least from an accountant's point of view, there are no profits available for distribution—e.g., *Verner v. The General and Commercial Investment Trust, Lim.*, and *Cox v. The Edinburgh District Tramways Co., Lim.*; and *per contra* it has been held that a realised profit made under certain circumstances is not available for distribution—e.g., *Foster v. The New Trinidad Lake Asphalt Co., Lim.* Although the actual decisions are not very numerous, instances might be cited almost indefinitely of companies who have declared a dividend when from an accountant's point of view there were no divisible profits, and of companies who have been advised that they ought not to declare a dividend even although it may be beyond doubt that the value of their existing assets considerably exceeded the amount of their liabilities and paid-up capital. Quite another class of decision was that of Mr. Justice Farwell in *Bond v. The Barrow Hæmatite Steel Co.*, where the effect was that the decision of the directors as to the necessity or desirability of applying profits towards the rehabilitation of depreciated assets was binding upon all classes of shareholders, even although, under the somewhat extraordinary articles of association of that particular company, the shareholders chiefly concerned had no voice in the management of the undertaking or in the selection of its directors.

It would be unwise for any mere layman to attempt to draw general conclusions from such a series of decisions, which are obviously not founded upon any recognised underlying principle, but are merely the outcome of

so many cases—often possessing but little in common—which have never been seriously argued upon their merits apart from the law, and which have (with the notable exception of *Foster's* case) been invariably settled upon the lines that it is open to a solvent company to do exactly as it pleases so long as creditors are not defrauded. This, of course, is in itself a fairly reasonable principle for the Courts to go upon, more especially in view of the admitted uncertainty of the law relating to the matter. But from the point of view of accountants the eminently unsatisfactory feature of this policy of non-interference is that it deprives auditors of any sort of support when they sound the first note of warning as to the imprudence of continuing upon any particular line of financial conduct, while reserving the right to turn round upon them at a later stage if anything should go wrong, and then say that it is they who have neglected their duties.

In the nature of things the auditor, if he is really competent, will in all probability foresee the ultimate result of paying a dividend not justified by the profits both sooner and more clearly than those who have not the advantage of his special knowledge. If he is able to convince the directors that he is right, the result is, of course, satisfactory in every sense, save that probably none of the parties concerned realise how much they owe to the foresight and firmness of the particular auditor in question. But if, on the other hand, the directors do not agree with the auditor, or if, while agreeing in general terms, they are indifferent to what may happen later so long as large dividends be paid in the present, then we may take it that for all practical purposes the auditor is helpless, and that the one result likely to be achieved by his

communicating his convictions to the shareholders will be that another auditor of less pessimistic views will be elected in his stead.

Under such circumstances it is hardly to be wondered at if auditors sometimes adopt the view that so long as a dividend can be legally declared it is a matter with which they are in no way concerned. This frame of mind receives the strongest support from the deliberate statement of a well-known Lord Justice of Appeal, who is reported to have said that it is nothing to an auditor whether a business is prudently or imprudently conducted, whether or not dividends are paid out of capital. As a statement of the law this can, no doubt, be unreservedly accepted. The duty of the auditor is to report to the shareholders; and, having reported, it is—from a lawyer's point of view at least—no concern of the auditor whether the shareholders choose to listen to his warning or not.

But if the auditor, recognising the fatuity of making himself unpopular by warnings about the future, should be unguarded enough to refrain from reporting to the shareholders anything which they have a legal right to know, then, so far as may be judged by past results, his conduct is to be reviewed not from what was known at the time when the lapse took place; not from the point of view of what the shareholders would probably have done or not have done had they then known all that they now complain has been withheld from them; but rather is he to be judged in the light of subsequent events, as though his omissions in the past had really and seriously a definite bearing upon what happened thereafter. That, at least, is the attitude that was adopted by the Courts in the *London and General Bank*

case and in the earlier stages of the *Kingston Cotton Mill* case; and it has so far dominated subsequent events that in numerous instances claims against auditors have been settled out of Court by practitioners who had the good sense to realise that they could not expect fair treatment in Court.

What can only be described as a judicial somersault took place in the case of *The London Oil Storage Co., Lim. v. Seear, Hasluck & Co.*, in which an auditor—whose subsequent bankruptcy renders any detailed criticism of his actions unnecessary—was held liable in the nominal sum of five guineas for negligence extending over a period of four years. But we question whether any of our readers will care to take advantage of a judgment which says in effect that an auditor need not count a balance of cash in hand, because if the directors do not themselves see that it is intact they are guilty of gross negligence. Even if such a decision were to be upheld by the House of Lords, it could not be seriously regarded as having any bearing one way or the other upon the professional duties of an auditor towards his clients.

But in the case which we referred to at the commencement of this article the question at issue was not the duties and liabilities of auditors, but the rights of preference shareholders to be paid their preference dividend when in point of fact profits sufficient for that purpose had admittedly been earned by the company. The holders of preference shares in the Wemyss Collieries Trust, Lim., were entitled to a preferential cumulative dividend of  $\frac{1}{2}$  per cent., and a further 1 per cent. if sufficient profits remained to provide therefor after payment of a dividend of 5 per cent. to the ordinary shareholders. In a sense it was

admitted that there were sufficient profits to provide for this additional 1 per cent. preference dividend, but the directors, relying upon an article which gave them full power before recommending any dividend to set aside out of the profits such a sum as they might think proper as a Reserve Fund to meet contingencies or for other purposes, carried the surplus profits to such Reserve. The preference shareholders objected to this course, but the Court held that the question was not merely one of the construction of the company's articles of association: it went to the root of the whole matter of company management, which rested upon the principle that, subject to the control of a general meeting, the directors are constituted the judges of what profits are available for dividend, and the rights given to shareholders are subordinated to the exercise of such directorial discretion.

We are aware that it is sometimes a little unkind to apply a legal decision to slightly different circumstances and ask whether it is seriously suggested that it would then be sound; but, after all, a decision which rests upon a sound principle must, in the nature of things, be one that is of general application. That being so, we should like to inquire whether in the event of preference dividends being non-cumulative it would be legitimate for directors of a company to make ample provisions for contingencies in those years when the effect of so doing would be to curtail the preference dividend, and to make little or no provision in years when the preference dividend would remain unaffected whichever course were pursued. We cannot help thinking either that our knowledge of the case, which is gathered from an editorial in the *Law Journal*, is in-

correct in certain important details, or else that the Scottish Judge has misapprehended the position. Directors have, it seems to us, the right to make all necessary Reserves before arriving at profits available for distribution, but the onus, we think, rests with them to show that such Reserves have been made in good faith and in the interests of the company generally rather than in those of any section of its members.

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#### **"Bookkeeping on the Slip and Card Systems."**

IN our issue of the 10th ult. will be found a report of an interesting paper read by Mr. E. E. PRICE, F.C.A., at a recent meeting of the Newcastle Chartered Accountants Students' Society, on the subject of Bookkeeping on the Slip and Card Systems, which will doubtless have already attracted the attention of our readers. The paper now before us is not Mr. PRICE's first contribution upon this important subject; and indeed it may fairly be said that he has been among the first to draw attention to the enormous progress that has been made by Slip and Card Systems of accounting during recent years, and has done much to familiarise the accountant student with methods which, in spite of all prejudice and opposition, are undoubtedly destined to occupy an even more important position in the future than in the past. The lecture was illustrated by a number of lantern slides, which must have materially added to its interest at the time, and helped to clear up many points that might otherwise have been in doubt; but as we have not been able to reproduce anything like all of these illustrations in our report, it is to be feared that the

latter must of necessity suffer in consequence, at all events so far as those who have no previous acquaintance with the system are concerned. This, however, is a defect which may to a very large extent be remedied by reference to our issue of the 8th March 1902, where a full report will be found of a paper on "Ledger Posting on the Slip System," read by Mr. PRICE at a meeting of the Chartered Accountants Students' Society of London.

If there be a fault in the paper now under consideration it is that it deals rather with the requirements and possibilities of a system of accounts adapted to meet the needs of some particular concern, rather than with the underlying principles which are to a very large extent common to all. When the underlying principles are already clearly understood, attention may, it seems to us, be very suitably and properly directed to applications of those principles most suited to the special requirements of any given set of circumstances. But when the principles themselves are not very clearly apprehended—as must be the case with regard to Slip and Card Systems, so far at least as the majority of accountant students' are concerned—it is, we think, by no means equally certain that attention can be profitably directed in the first instance to detailed applications adapted to the requirements obtaining under special circumstances. What is more important, at all events in the first instance, seems to be a firm grasp of the possibilities of the system, and of its necessary limitations. It is, we think, owing to a failure to appreciate the existence of such limitations upon the part of some of its advocates, that the system has

come in for more than its fair share of criticism at the hands of accountants and business men generally. But it is difficult to know what else could in reason be expected, when advice upon methods of accounting is sought from the manufacturing stationer rather than the professional accountant. Five or six years ago, of course, the majority of accountants in this country knew little about Card or Slip Systems, and those interested in the matter were more or less obliged to rely for information upon those business houses who undertook the supply of the necessary stationery. It was obviously, however, unwise and unbusinesslike to accept their statements on the subject as the advice of qualified and disinterested experts in accounts, and in the inevitable reaction it is to be feared that the system was too often blamed for what were merely defects in its application. It would be as reasonable to blame the principles of double-entry for the failure of a Ledger-keeper to bring his books to an exact balance.

Even now it seems to us that not nearly sufficient attention is given to the possibilities of abuse and fraud—which in some directions at least are undoubtedly multiplied by the substitution of slips or cards for bound books—and safeguards which are as necessary as they are practicable are too often neglected. So long as this state of affairs continues we must expect from time to time to hear of frauds and irregularities which have been caused or encouraged by the abandonment of bound books and the adoption of some application of the Slip System instead; and it seems to us that the dangers which undoubtedly do attach to any such transition should receive far more careful attention at the hands of the profession than they have



hitherto done. In this respect it is not a little noteworthy that there is practically nothing really new about the paper now before us as compared with Mr. PRICE's lecture delivered towards the end of 1901, yet it can hardly be supposed, and is certainly not a fact, that matters have stood still during that period of upwards of four years. At the present time it seems to us that a paper drawing special attention to the most recent devices and improvements, and explaining the exact object that each was calculated to effect, would be most valuable, not merely to accountant students but also to most practitioners. We may depend upon it that in the near future an increasing number of progressive business houses will insist upon utilising the Slip System, and it therefore behoves accountants to see that they do not lose their influence over their clients by proving incompetent to advise them upon what is so obviously a matter of the greatest practical importance.

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#### Some Legal Terms.—V.

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#### "Common Law" and "Statute Law," "Codes" and "Codification."

[BY OUR LEGAL CONTRIBUTOR.]

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I HAVE already in a previous article endeavoured to distinguish between the terms "Common Law" and "Equity." I shall now try to explain the meaning of the term "Common Law" when used, as it frequently is, as opposed not to "Equity," but to "Statute Law."

What is meant, for instance, when we are told that certain contracts are void at Common Law and others by Statute? Or, again, when corporations are classified into Statutory and Common Law Corporations? To show that the distinction sought to be

emphasised on such occasions is nothing more nor less than the difference in the method whereby the law is originally laid down or imposed is the aim of the present lecture.

As pointed out in the previous article above referred to, the Common Law, or original law of England, arose out of, and is founded upon, immemorial and general usage or custom of the realm. But custom *qua* custom has no legal force or sanction, being, indeed, nothing more than a species of morality. So soon, however, as custom has been recognised by a judicial decision in a Court of Law it passes out of the region of morality into that of law—Judge-made law, as it is sometimes called. For example, let us take the law of Bills of Exchange. Now originally such instruments were regulated by the customs of merchants, or the "*Lex Mercatoria*," as it was called, which customs or "*Lex*," *as such*, formed no part of the English Common Law until the Courts incorporated them into it by recognising and acting upon them in their decisions.

An extremely modern instance of this process, which is still going on, will be found in the case of the *Bechuanaland Exploration Company v. London Trading Bank* (1898, 2 Q.B. 658), where the Courts recognised as law the custom of treating as negotiable instruments debentures to bearer of an English company.

Bearing in mind what has been said before on the extraordinary rigidity and conservatism of the Common Law, it will not be altogether surprising to learn that the process whereby well-established customs became recognised as law was, in the old days at least, carried on under a fiction. The Judges, shrinking from all idea of innovation, professed to be always applying an existing body of law and to be deciding in accordance with the principles of previous cases, whereas in truth and in fact they were, albeit grudgingly and of necessity, remodelling and expanding the law to suit altered circumstances and requirements. If one may be excused a metaphor the process in which they were engaged was more analogous to the rolling of the humble snowball than to the chipping of particles from a glacier fed by the eternal snows of antiquity.

The method of origin of "Common Law," then, is by judicial decision. We have now to examine that of "Statute Law," and for that purpose I think we cannot do better than turn once more to the law of Bills of Exchange. I have but just pointed out how that law became a part of the Common or Judge-made law, but he who to-day is desirous of informing himself in that branch of the law must seek it not as "Common Law" in the reported decisions of the Judges, but in the sections of the Bills of Exchange Act, 1883. In other words, that which was down to that date "Common Law" has since then been "Statute Law." The law for the most part is still the same, but the method of its origin has been changed, and what was originally Judge-made is now Parliament-made, the date of the transformation being the day on which the Bill received the Royal Assent. The method of origin, then, of "Statute Law" is legislative, not judicial, as we have seen it to be in the case of "Common Law."

This, then, is the distinction to which we advert when we use the terms "Common Law" and "Statute Law" as opposed to one another. And when we speak of contracts void at the Common Law we mean contracts which have been decided to be so by the Judges: when we speak of contracts void by Statute, such as the Legislature has declared to be void in an Act of Parliament.

Statutes may be variously classified, but it will be sufficient for our present purpose to refer solely to their classification according to their objects. The object of a statute may be to introduce new law, as instances of which we may refer to the Companies Act of 1862, the Trades Union Act of 1871, and the Workmen's Compensation Act of 1897, which respectively introduced the then novel principles of Limited Liability, the Legality of Trades Unions, and the Liability of employers for accidents to their workmen, irrespective of negligence.

On the other hand, a statute may have for its object solely or principally the declaration of existing law. As time goes on the cases and decisions in which, as we have seen, the Common Law is to

be discovered are multiplied exceedingly, and become in many instances irreconcilable, so much so indeed that to find out what is the law on a given point becomes a difficult task even for experts, and next to impossible for the ordinary business man. Accordingly a cry goes up for legislation, for a statute declaring in an easily approachable manner what the law really is. Thereupon the Government of the day deposes the task of framing such a measure to some learned lawyer, or lawyers, and they, having collected and collated all the cases in which the law then lies embedded, and having extracted from such mass the principles of the decisions, cast the result of their labours into the form of a Bill, which in due course, if it passes, becomes an Act or Statute. Such an Act is called a "Code" and the process that produced it "Codification," and thenceforth the law on that particular subject is to be sought in the sections of that Act or Code, and not in the decisions which underlie it. In some systems of law, notably the Roman in the ancient world, and the French and German in modern times, codification has been applied to the law generally, but although in some of our dependencies, more particularly in India, a similar policy has been adopted, in this country its employment has been restricted to particular branches of the law, the three most notable instances being the Sale of Goods Act, the Bills of Exchange Act, and the Partnership Act, the acquaintance of all of which "Statute Law" Accountant Students must necessarily make.

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### Weekly Notes.

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#### An Amusing Circular.

A correspondent has forwarded to us a copy of a circular issued by a member of the Institute, who states that in order to meet the convenience of accountant students he has inaugurated a system of coupon books, and is prepared to answer any questions on knotty accountancy points that may be submitted, provided that one of these coupons is attached. The prices asked for these books of coupons are strictly moderate, but in spite of the circumstance we doubt whether the system is likely to

be generally popular. The average accountant student in doubt upon any particular point does not as a rule feel much hesitation in writing to the author of any text-book that he may have, and expect to receive an answer to his inquiry gratis!

**The Exercise of Discretionary Powers by Trustees.** A recent issue of the *Birmingham Post* contains a short account of the decision of Mr. Swinfen Eady in *In re Hedges (dec.)*, *Hedges v. Rhodes*, which in the absence of a fuller and more authoritative account can, we think, only be accepted with caution. This report states that a summons was taken out by three out of four trustees of the will of the testator asking that certain property might be sold. The will contained a power to the trustees to sell this property during the lifetime of the widow, but his Lordship held that the power of sale which was vested in the four trustees was a discretionary power, and that as they could not all agree to exercise that discretionary power it consequently could not be exercised at all. He therefore made no order upon the summons. There must, it seems to us, either be something seriously defective in the report, or something very exceptional in the circumstances, for in the ordinary course of events the Court will facilitate rather than discourage the sale of more or less speculative assets and their conversion into trustee securities.

**The City's Chancellor of the Exchequer.** The members of the Coal and Corn and Finance Committee of the Corporation of the City of London dined together at the Guildhall last month under the presidency of Mr. F. G. Painter, F.C.A., when a very handsome testimonial was presented to Mr. Harvey Preen, F.C.A., the late Chairman, in recognition of the great services rendered by him to the Corporation during the past two years, and of the marked improvement in the finances of the City during his term of office. It is satisfactory to note that this improvement has coincided with the appointment of a Chartered Accountant to the position of Chairman.

**Joint-Stock Companies as Trustees.** A correspondent, writing to us upon the subject of a pamphlet recently issued by the Ocean Accident and Guarantee Corporation, Lim., in which they hold themselves open to undertake trusteeships of property

of any description, suggests that in view of the fact that the prosperity of this company has been largely due to the assistance of professional men, it is hardly treating these men fairly to embark in opposition to them on such terms as those set out in the pamphlet referred to. The correspondent adds that the weak part of the proposed arrangement seems to be the absence of any effective control over the legal charges. It is conceivable that, if a more rigorous system of control were provided, solicitors would feel as aggrieved at the new departure as certain accountants now appear to be. We cannot help thinking, however, that it is a little late in the day to embark upon a protest of this description, in that for a number of years past companies of all descriptions have undertaken trusteeship and executorship work. So far as we are aware, accountants have not suffered in consequence, but rather has the effect of the departure been to draw the attention of moneyed business men to the fact that a qualified and remunerated trustee is more likely to prove satisfactory as an administrator than a personal friend who is expected to do the work for nothing. It must also be borne in mind that there is at the present time a strong movement on foot in favour of the establishment of a public trustee; and, that being so, it is clearly to the advantage of professional men that the wealthy insurance corporations should be ranged upon their side in opposition to a scheme which, if chiefly objectionable on the grounds which make all extensions of officialism undesirable, is also very naturally viewed askance by solicitors and accountants for the more selfish reason that its success would tend to divert into official channels remunerative work which is at the present time performed by them.

**Municipal Profits.** Our contemporary *The Municipal Journal* pursues unabashed its policy of quoting carefully selected fragments from these columns which appear to support its own partisan views, while omitting anything that may be stated upon the other side. Its most characteristic feature is, however, its frank inability to appreciate the fact that by any possibility our views upon this subject should be disinterested, and not the product of subsidies provided by rapacious anti-municipalists. Our contemporary states that the principal argument used by the complainants in support of their allegation that municipal profits are not true profits, but paper profits, is that the local authorities fail to make adequate provision for depre-

ciation and obsolescence. By way of retort it is suggested that to equitably decide this question there must be applied the test of a standard, and that a proper standard to apply, under the circumstances, is the companies' own standard—that adopted by the very men who make the allegations of "cooked" accounts, and that the municipalities easily beat the companies in making provision for depreciation, even apart from the Sinking Funds. It is a pity that our contemporary—and, for that matter, most local authorities—cannot be induced to appreciate that some at least among those who criticise their financial methods do so in the interests of the ratepayer, and not in the interests of proprietary companies. From the point of view of ourselves, and those who think like us, the question is not whether local authorities make as much, or more, provision for depreciation than proprietary companies, but whether they make sufficient provision to establish their finances upon a sound basis. We have more than once drawn attention to the inadequate provision made for depreciation by certain important proprietary companies whose business more or less conflicts with the trading departments of local authorities, but the point which our contemporary is either unable to appreciate, or unwilling to admit, is that if a proprietary company chooses to make inadequate provision for depreciation, with the result that eventually its shareholders lose their money, the loss is confined to those shareholders, who, after all, are the only parties interested in the matter. If, on the other hand, a local authority makes inadequate provision for depreciation at the present time, the inevitable result in the long run must be that at some later stage it will have to make provision for depreciation or for renewals upon a larger scale—that is to say, a future generation of ratepayers will have to suffer because the existing generation received an undue advantage, or else because the services undertaken were supplied to the consumer at a lower price than could be afforded. In the one case a fallacious basis of accounts is a matter of private concern; in the other it is a matter of public concern.

books and financial books in the case of a manufacturing undertaking is an impossibility, and puts this forward as an illustration of the ignorance still existing among Chartered and otherwise styled accountants on the general subject of cost accounting. Possibly the term "exact balance" may be understood by our contemporary in some special sense of its own which renders our simple statement of fact *prima facie* absurd. Upon no other supposition can we imagine that anyone with the least pretence to knowledge would regard our statement as other than the merest truism which would certainly not have called for expression but for the statements contained in our correspondent's letter. Of course, it stands to reason that any accounts kept by double-entry can be made to balance, using the term in one sense; but if, to secure this mechanical agreement of results, entries have to be made in the books which represent unreconciled discrepancies between the record and the subsequently ascertained facts, we for our part do not regard that process of "cooking" the books as bringing them to an exact balance. If our contemporary does, we will admit that its meaning of the term "balance" differs from our own, and that within the limits of its own definition its statements may be justified. For our own part, however, we consider that where, for example, a difference between the balance of a Stores Account of any description and the ascertained stock has to be written off as an unexplained deficiency or surplus, those Stores Accounts have not been brought to an exact balance, and we repeat that in practice an exact balance is an impossibility. Books can, of course, always be made to balance in a sense, but that is another matter altogether, although possibly the editor of the *Business Man's Magazine* does not appreciate the distinction.

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"Sub Judice." Our readers will not have failed to notice the letter from Messrs. Norton, Rose, Norton, Farish & Co., which appeared in our Correspondence columns last week under the heading "What is an Incorporated Accountant?" The writers, who are, we understand, the solicitors of the Society of Accountants and Auditors, request that all observations upon the motions reported in our recent issues may be suspended while the matter is before the Courts. It is, to say the least of it, strange that such a request should

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**The  
Balancing of  
Cost Accounts.**

The March number of the *Business Man's Magazine*, English edition, quotes a statement made in these columns a short time since in reply to a correspondent, to the effect that an exact balance as between costing

be made before proceedings have been actually commenced, and merely because one of the parties has determined to proceed by way of action, and, of course, until proceedings are actually pending, anyone is entitled to discuss the matter who may feel disposed so to do. While, however, a case is *sub judice*, comments calculated to interfere with the course of justice—that is to say, to influence the decision of the Court—render the commentator liable to attachment for contempt. That any legitimate criticism on the recent motion would have the least effect upon the Judges before whom the action may eventually be heard several months hence may well be doubted, nor is it easy to see what purpose is served by this attempt to stifle comment. For our own part, however, we have already said as much about the matter as we propose to at the present time, and our readers will, under the circumstances, appreciate the expediency of postponing an expression of their views for the time being. We would suggest, however, that Messrs. Norton, Rose, Norton, Farish & Co. should advise us in due course of the progress of proceedings, so that our readers may have the earliest available information of the result, should a settlement be arrived at out of Court.

**Public Trustee Bill.** It will doubtless be remembered that last year no little dissatisfaction was patent in banking circles on account of an important clause being ruled out of the Public Trustees and Executors Bill before the Standing Committee. The clause permitted the testator, settlor, or other creator of a trust to direct or authorise the employment of a particular banker, and allowed the public trustee to employ any banker who had been intimately connected with the affairs of the estate he was dealing with. The Bill did not become law, and in the new measure which has just been introduced by the Lord Chancellor it is provided that any bank or insurance company, or other body corporate, may by an order of the Court, made on the application of any person on whose application a new trustee may be appointed, be custodian trustee of any trust, with power to charge and retain or pay out of the trust property such fees, not exceeding the fees chargeable by the public trustee as custodian trustee, as the Court may allow. Many bankers have expressed the opinion that trustee business of this kind is carrying the work of a bank beyond its special province; but, apparently, bankers desire to pick and choose, and as the writer

of Banking Notes in the columns of *The Financial Times* puts it, "although they may not wish to bid for such kind of business, many desire that they should have the chance, supposing an important estate, easy of liquidation, has to be dealt with, of retaining its winding-up in their hands, rather than see it go irrevocably to the Bank of England." Among other clauses of the Bill are the following:—The public trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole. Subject to and in accordance with the provisions of this Act and rules made thereunder, the public trustee may, if he thinks fit—for the purpose of saving expense to persons of small means—act in the administration of estates of small value; act as custodian trustee; act as an ordinary trustee; be appointed to be a judicial trustee. Subject to the provisions of the Act, and to the rules made thereunder, the public trustee may act either alone or jointly with any person or body or persons in any capacity to which he may be appointed in pursuance of this Act, and shall have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the Court, as a private trustee acting in the same capacity. The public trustee may decline, either absolutely or except on the prescribed conditions, to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property. The public trustee shall not accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorised to do so by rules made under this Act. The public trustee shall not accept any trust exclusively for religious or charitable purposes, and nothing in this Act contained, or in the rules to be made under the powers in this Act contained, shall abridge or affect the powers or duties of the official trustee of charity lands or official trustees of charitable funds. The Lord Chancellor shall appoint a fit person to the office of public trustee, who shall hold office during pleasure, and receive such salary or fees and be appointed on such terms as the Treasury may determine. The Lord Chancellor is also to appoint the officers of the trustee, "who may, and shall, if the Treasury so require, be persons already in the public service." The Act, if passed, is not to apply to Ireland or Scotland.

**Dissentient  
Shareholders  
Again.**

Unless some clear-headed legal reformer will take in hand the rights and interests of dissentient shareholders under reconstruction schemes, it appears quite likely that the scales of justice will only remain in perfect balance by having both sides filled with contrary cases. We now have the case of *Fuller v. Whitefeather Reward, Lim.*, which dealt with a sale by a company under its memorandum, while a going concern, so as to exclude the operation of Section 161 of the Companies Act, 1862. The particular point was that where dissentients had claimed to have their shares sold, and some had remained unsold in spite of the liquidator's endeavours, they should go back to the purchasing company, and be available for subsequent issue. The case of *Manners v. St. David's Copper Mine, Lim.*, is at once recalled, for there the agreement of purchase provided that any shareholder who did not accept the new shares forfeited at once for the benefit of the purchasing company his share in the assets of the vendor company, and the Court of Appeal held such provision to be bad. In *Bisgood v. Nile Valley Co., Lim.*, the idea was to sell unclaimed shares as far as possible *en bloc* and distribute the proceeds among the dissentients, but the provisions prescribing this course were fixed by the agreement of purchase itself, and Mr. Justice Kekewich held them to be *ultra vires*. In the present instance we are told that they were ordained by proper resolutions passed in the course of winding-up. It is probably doubtful whether we have yet arrived at the end of all these apparently contrary cases, but it is to be hoped that the question will be settled sooner or later, for it is difficult to say at the moment whether, upon a sale under a memorandum, it is possible to frame a workable scheme of reconstruction. It would not be a bad idea if some of our readers who have the inclination and the necessary time were to collate all the cases dealing with reconstruction, so that the tabulated result might clearly show the strange manner in which the present state of affairs has arisen.

**How to Read a  
Prospectus.**

A recent prospectus affords us an admirable illustration of the really excellent manner in which many words may be used, the ultimate meaning of which is nil. From the document in question, we have the following guarded phrases :—

" Estimate."

" Estimates " (the verb).

" Anticipates."

" Proposed."

" Believe " (3 times).

" Relied mainly on the judgment."

" Confirmed by the opinion."

" It is anticipated."

" Negotiations are in progress."

" According to the calculation of the general manager."

" Profits should amount to at least."

" According to the general manager's estimate."

Even in the promoters' halcyon days it will probably be difficult to match these really fine specimens of froth.

**Foreign Insurance  
Companies in  
England.**

In the House of Lords last week, the Earl of Onslow called attention to the recent disclosures with regard to the methods adopted by certain insurance companies in the United States having branch offices in this country, and the Government was asked whether any steps would be taken to require that foreign companies carrying on business in this country should keep such proportion of their assets here as would suffice to meet claims that might be made upon them by British policy-holders. Replying on behalf of the Board of Trade, the Earl of Grenard said that the control they had over foreign insurance companies doing business here was not great. The Government had very carefully considered the matter, and they thought that the best way would be to appoint a Select Committee. The Earl of Onslow expressed his great satisfaction at the suggested course.

## NOTICE.

NEXT FRIDAY being GOOD FRIDAY, Letters to the Editor, as well as General Matter, must be delivered not later than the last post on TUESDAY next, if intended for current issue. The Offices will be closed from the 13th to the 16th April, both inclusive.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinion expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### Income Tax.—Undervaluation of Stock.

*(To the Editor of The Accountant.)*

SIR,—We should like your opinion on the following question: Is a manufacturer entitled, with regard to income-tax, to heavily and systematically undervalue his stocks, and thereby create a Secret Reserve and decrease his profit?

We ask the point because it seems to us that a private individual, if he be allowed a free hand in this respect, need never show a substantial profit.

We shall be glad if you will be good enough to reply through your paper, as the question may be of interest to others besides ourselves.

Thanking you in anticipation, we are,

Yours faithfully,

March 29th 1906.

IMPERIAL.

[It seems to us difficult to distinguish between the "Secret Reserve" referred to by our correspondent and a fraudulent return.—ED. *Acct.*]

### Consideration in Contracts.

*(To the Editor of The Accountant.)*

SIR,—I notice that in a lecture to the Leeds and District Chartered Accountants Students, reported in your issue of March 24th, Mr. W. E. Farr is reported to have stated that contracts under seal require consideration. He says, "It is sometimes said that a "contract under seal does not require any consideration. This is wrong; it requires a consideration, but

"a consideration is always implied when the contract "is under seal" (p. 377).

Dr. de l'Hoste Ranking, in his pamphlet on "The Law of Contract" (p. 13), says, "The ordinary maxim "that form is binding because it imports consideration "is incorrect, it being the form which, apart from consideration at all, carries with it legal consequences."

I presume that, in the absence of any suggestion of fraud or duress, a gratuitous promise is binding if made under seal?

I am, Sir, yours faithfully,

March 29th 1906.

VIDIMUS.

### Registration for the Profession.

*(To the Editor of The Accountant.)*

SIR,—Your correspondent "Unattached" is more than fortunate in being professionally "attached" with a Fellow of the Institute of Chartered Accountants, yet why he has taken upon himself the burden of formulating proposals which not only affect the "lesser lights" of the profession, but the "stars" also, passes my comprehension. Surely he might have left the drafting of conditions of such vital importance to those who, if not more qualified, would at any rate be delegated for the purpose. "Two heads are better than one" is a true, even if an old, saying, and no doubt, amongst a number of men, one could be found who would remember, and provide for, such an institution as the Corporation of Accountants, which has been in existence for nearly fifteen years—merely six years less than that of the Society of Accountants and Auditors. But enough, I hold no brief for any society or institution. I can quite understand "Unattached" omitting such a long-established body of professional gentlemen as those mentioned, also overlooking—I might almost say, practically ignoring—such a body of men as the accountants' clerks. This unattached accountant—who has taken so much upon himself, and who, perhaps by way of charity, has condescended to have committed to printers' ink the fact that "quite a number" of competent and straightforward men who, through circumstances, are compelled to work for other more fortunate individuals in the capacity of clerks, are deserving of admission to registration—provides in Proposal 8, Clause (g), that accountants who have been in practice six months prior to the date of

registration shall be admitted subject to their passing qualifying examinations. No *distinct* proposal relative and advantageous to accountants' clerks appears. The accountant's clerk, no matter what his length of service, no matter what his capabilities are, is practically beyond the pale of the registration doors. His claims to recognition do not appear on the horizon of "Unattached's" mind, except as an after-thought. Out, and for ever out, will be his portion, unless he takes Time by the forelock and pledges himself in a brotherhood to *demand*, and not *beg*, rights which no impartial judges will deny.

Yours faithfully,

March 28th 1906.

UNATTACHED No. 2.

### Deeds of Arrangement.

(To the Editor of The Accountant.)

SIR,—I notice in last Saturday's *Accountant* you state in a footnote to "Student's" enquiry that the period of seven days allowed for registration of a deed of arrangement cannot be extended. Although this is the period stated in the Act, the Court, if sufficient cause be shown, has power to and will extend it. I know of a case where leave to register was granted ten or twelve days after the deed was executed.

Yours faithfully,

NORMAN HURTLEY.

Leeds, April 3rd 1906.

### A Designation for the Profession.

(To the Editor of The Accountant.)

SIR,—The suggestion is made in your columns this week, not for the first time, that the Institute should adopt some other title for its members than that of Chartered Accountant; some term to the use of which they might obtain an exclusive right. Your correspondent, believing it to be an undoubted fact that a large proportion of the business public does not distinguish between Chartered, Incorporated, and any other style of accountant, thinks that the adoption of a new name would put an end to the clashing between Chartered and other *brands* of accountants. But would it?

It is extremely unlikely that the Institute could obtain for its members the exclusive right to call themselves by any new name which might be agreed upon; assuming that the idea were entertained. Such a right is only given, I think, in cases where it is shown that some particular name is universally recognised as having been used for a considerable period. In other words, the right might be obtained after the event, but not before it. If, then, they adopted a new name others might adopt it also, before they secured their right to it.

But, assuming that they did obtain the right, then other associations of accountants might similarly obtain the exclusive right to other new names; with the result that, instead of putting an end to the clashing which exists, there would, in all probability, be more clashing, and matters would not appear in a light any clearer to the business public.

On the other hand, there is something in the suggestion that all accountants might adopt another name under a scheme of registration. But this presupposes what so far we have failed to obtain—*i.e.*, agreement amongst ourselves. Any new name ought to be really new, and not merely an old name newly applied: a word specially coined for the purpose would have many advantages. The name "accountant" is objectionable, not so much because we have seen it "joined to many and varied occupations" as because of its meaning. The professional accountant of to-day is not one who "accounts" only, he is an examiner of accounts, a superior to whom the "accountant" is often answerable.

After careful consideration I respectfully suggest to the members of the profession generally that the word "Accorditor" would not be inappropriate. This is not merely an amalgamation of the words *accountant* and *auditor*, it is an addition to the words derived, like *accord*, from the Latin *ac* for, *ad* to, and *cor*—*cordis*, the heart. Annandale's Imperial Dictionary gives the following as meanings of the word *Accord*:—"Adjustment of a difference, reconciliation; specifically in 'law, an agreement between parties for the settlement of some controversy.' Other meanings are 'to bring to an agreement,' 'to settle,' 'to adjust.'"

"All which particulars being confessedly knotty and difficult can never be *accorded* but by a competent stock of critical learning.—SOUTH."

If all existing professional accountants could agree upon some common basis of union they would be more



likely to obtain for the profession the exclusive right to, say, the name "Accorditor," under a scheme of registration, than any single association by itself; and by so doing they would prevent clashing.

But what would be the fate of the word "accountant"?

Yours,

CHAS. R. WHITNALL.

*Liverpool, April 3rd 1906.*

[It seems to us of little use to suggest new names now. In the nature of things, if they are at all apt, they will be appropriated by someone before they can be monopolised by the profession.—*Ed. Acct.*]

#### Debt Collection and Solicitors.

*(To the Editor of The Accountant.)*

SIR,—I have read in your last issue the article under the above heading. I note that you state there are two things which a debt-collector should avoid. One, claiming payment from the debtor of a fee; Two, representing himself as a solicitor. The latter is a well-established point to be avoided, but can you give me your reasons for the first of the two above points being avoided? There is no doubt that one cannot *claim* any payment from a debtor; not even a solicitor can do so, but is there any penalty attached to, or any risk in any way, in asking for a fee in your demand note, and in accepting the fee if it is paid?

Yours truly,

*April 3rd 1906.*

A SUBSCRIBER.

[Speaking from memory, we think it has been held that to claim a fee is to represent oneself as being a solicitor.—*Ed. Acct.*]

### The Institute of Chartered Accountants in England and Wales.

At a meeting of the Council, held on Wednesday, the 4th April 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—

Mr. John Gane, President, in the chair; Mr. W. B. Peat, Vice-President; and Messrs. W. Ashworth, J. B. Ball,

J. H. Blackburn, W. Blease, T. Bowden, E. M. Carter, Ernest Cooper, E. Edmonds, Sir Walter Fisher, Messrs. W. H. Fox, A. H. Gibson, J. Gordon, T. Gregory, J. G. Griffiths, J. E. Halliday, B. W. Hardcastle, J. S. Harmood-Banner, M.P., A. C. Harper, D. Hill, F. A. Jenkins, H. Woodburn Kirby, G. Walter Knox, F. W. Pixley, W. Plender, F. J. Saffery, T. G. Shuttleworth, G. Sneath, W. A. Stone, E. Waterhouse, T. A. Welton, F. Whinney, T. Wise, and J. W. Woodthorpe.

The Secretary reported the death of—

Mr. A. Banister, F.C.A., London.

Sir Robert Bridgford, F.C.A., Manchester.

Mr. S. Hurd, F.C.A., Leeds.

„ J. Luckin, F.C.A., Chelmsford.

„ T. H. Breden, A.C.A., London.

„ R. M. Burgess, A.C.A., Leeds.

#### Recent Additions to the Library.

##### *Purchased.*

Woollen and other Warehousemen's Accounts. By J. Mackie. London: 1906.

Palmer's Company Precedents. Part 1. 9th Edition. London: 1906.

Local Government Law and Legislation for 1905. Edited by W. H. Dumsday. London: 1905.

Mew's Annual Digest for 1905.

Sell's Directory of Registered Telegraphic Addresses, 1906.

Palmer's Index to *The Times*, Oct.-Dec. 1905.

Civil Service and Revenue Departments Appropriation Accounts, 1904-5.

Building Societies' 10th Annual Report for 1904. Part 2.

Life Assurance Companies' Return for 1905.

Trustee Savings Banks: Report of Inspection Committee, 1905.

Transactions of the Pipe Roll Society, 1884-1904. 25 Vols.

New English Dictionary. By J. A. H. Murray. Matter—Mesnalty. (Part of Vol 6.)

Stock Exchange Official Intelligence, 1906.

Parliamentary Debates. Vol. 1 of 1906.

International Directory of Booksellers. Edited by J. Clegg. Rochdale: 1906.

*Presented by A. G. Platt, C.P.A.*

Corporation Accounting and Corporation Law. By J. J. Rahill. 2nd Edition. Fresno: 1906.

*Presented by the Publishers (Messrs. Butterworth & Co.).*

Principles of the Law of Partnership. By A. Underhill. 2nd Edition. London: 1906.

*Presented by B. M. Graham, C.A. (the Secretary).*

Edinburgh C. A. S. S. Transactions, 1904-5.

## Colliery Accounts.

By E. E. PRICE, F.C.A.

A LECTURE delivered to the Chartered Accountants Students' Societies of Leicester and Hull on March 7 and 21 respectively.

When our descendants in the dim future look back upon the present era they will probably describe it as the Coal Age. The Stone Age and the Bronze and Iron Ages have come and gone, and left their mark upon the evolution of man; but a far more potent factor in his development than anything that has preceded it is this wonderful source of heat, light, and power which we call coal.

We are so familiar with its uses that we are apt to forget that nearly all the power that drives the lathe and the loom, and provides us with locomotion on sea and land, is derived from the stored up sunshine which we extract from this mineral, while chemicals of great value and importance are derived from it as a by-product, and even electricity, the omnipotent fairy that performs such miracles, is derived (in this country at least) from the pent up energy of coal.

The great progress of these islands in the past century, and our commercial supremacy hitherto, may be directly traced to our being well in advance of other nations in the development of our coal supplies, and it will be interesting to note the magnitude to which the industry has attained, as shown by the following statistics. The latest figures available are for the year 1902, and apply to the whole of the United Kingdom.

Total Output of Coal ... .. 227 Million Tons.

Increase of Output in Ten Years 45 " "

The value of this large quantity at the pit's mouth (year 1902) was £93,500,000.

The industry is not only of great importance to the capitalists but also to the workman. Number of workmen

employed, 805,100. Expenditure on wages over £61,000,000 per annum.

The capital employed is not ascertainable, but has been estimated at £110,000,000.

The average profits are not large, considering the risks involved, the estimated average annual profit on a basis of 15 years being £5,170,000, yielding only 3¼ per cent.\*

It would be an interesting occupation to extend this brief introduction by entering into a description of the various coal-fields of Great Britain, their geological features, the methods employed for winning coal, and the conditions on which collieries are held and worked, but my subject to-night is *Colliery Accounts*, and not their management or purchase; and if any of you at any time are tempted to become interested in colliery property in any way, I would advise you before assuming any responsibility of that kind, to provide yourselves with the best expert advice, because I know of very few undertakings where there are more pitfalls for the unwary, and where money can be more rapidly made *and lost*, than in coal mining.

If, however, you are desirous of extending your knowledge of colliery matters, particularly as regards the onerous covenants of mining leases, I would advise you to peruse a valuable lecture by the late A. A. James, F.C.A., on "Collieries, their Management and Accounts," which was read to the London Society in October 1894, and is printed in their "Transactions."

Collieries are often parts of larger concerns, including ironworks and other undertakings. It would enlarge too much the scope of this paper if I were to attempt to deal with the points that arise for consideration in the accounts of these concerns, and I shall therefore assume that we are dealing with a company of colliery owners only, and with the view of assisting us in the consideration of our subject I have placed before you the Balance Sheet and Trading Account of a company supposed to own and work a leasehold colliery in England or Wales, and to carry on the business of working and selling one kind of coal only, without any other associated business.

### Balance Sheet.

Taking first the Liabilities side, I do not propose to offer any remarks upon the share and debenture capital, there being nothing of a special character about these familiar items in a company's Balance Sheet. You will notice, however, that it is rather unusual for a colliery company to issue debentures, unless the coal-field is a freehold,

\* Since this lecture was written statistics for 1905 have become available as follows:—

Total output of coal, 236,111,150 tons.

Number of persons employed, 858,373.

which, again, is rarely the case. Assuming the colliery to be leasehold, its principal asset will be the capital outlay upon pit-sinking and development and the machinery and plant in use. These have very little value, apart from the working of the colliery. Cases have happened where, after an explosion of coal gas, or some other accident, the mine has had to be abandoned and the assets realised. In such an event the claims of the lessor would probably be heavy, and would absorb the whole of the assets, leaving nothing for the debentures. We shall not, I think, be erring on the side of excessive caution if we say that debentures ought not to be issued by a colliery company, except under the following conditions:—

- (1) The term of repayment to be moderate in length.
- (2) A substantial amount of share capital to be uncalled, and to be mortgaged to the debentures.
- (3) The company's properties to be extensive, and include several pits, so that an accident at one pit will not wreck the company.
- (4) The margin of profit after paying debenture interest should be considerable.

The next item of importance is the Reserve Fund for redemption of capital expenditure. This will be more conveniently dealt with when we come to the annual instalment charged in the Trading Account.

The liability for instalments on wagon contracts requires some explanation. Collieries usually own a large number of railway wagons, and often these are purchased under hire-purchase agreements extending over five, seven, or more years, the wagons becoming the property of the hirer on the payment of the last instalment. Loans can also be obtained upon wagons, repayable by instalments over a period of years; and in such cases security is given to the lenders by selling the wagons to them at a sum corresponding to the loan borrowed, and repurchasing them under a hire-purchase agreement.

In these transactions, although the agreement is in form a hiring, it is in reality a purchase, and should be treated as such. The instalments payable (which for technical reasons are called "hire") are made up of principal and interest in ascertainable proportions. The total of the principal included in the instalments is therefore a liability, which should appear in the Balance Sheet. The interest will be a charge to Profit and Loss from year to year as it accrues.

The agreement for purchase, however, does not state the amount of principal, nor does it divide the instalments into principal and interest. All we know is that 100 wagons have been purchased for a payment of, say, £372 each half-year during ten years, and the question arises

how we are to ascertain the liability to appear on the Balance Sheet.

It is clear that these 100 wagons could have been purchased for a lump sum in cash, say £6,000, and that the difference between that sum and the aggregate of the instalments payable, say £7,400, will represent the interest charged for the deferred payment. This cash price can always be ascertained from the manufacturers, or estimated by the management of the colliery, and when this is known the division of the instalments and the amount of liability at the end of each half-year can be calculated, as shown in Statement D. Whenever a fresh purchase of wagons is made, or a loan raised on a hire-purchase agreement, it is necessary to prepare a table on the lines of Statement D, and to make entries in the company's books every half-year in the form shown appended to that statement.

By adopting this method the correct amount of liability under the agreement will always appear in the Balance Sheet, while the wagons themselves, being in fact purchased, but not paid for, will appear among the assets at their cost, on the basis of payment in ready cash, which is clearly their true value, subject to depreciation by wear and tear.

In order to make the calculation in Statement D we must ascertain the rate of interest which is applicable. This can be ascertained from the data given, namely:—

Purchase-price in Cash.  
Amount of each Instalment.  
Number of Instalments.

But it is a difficult matter to make the necessary calculation directly, unless you have considerable mathematical knowledge. A simple method is given by Mr. A. L. Dickinson in his paper on "Interest and Sinking Funds" ("London Transactions," 1891, p. 90), and it is also explained in my paper on "Colliery Accounts" in the "Transactions" for 1897. If any of you desire further particulars on this point I shall be happy to furnish them.

Turning now to the Assets side of the Balance Sheet, we come to the capital expenditure, which is here included in one item, and embraces:—

- (1) Cost of Freeholds (if any).
- (2) Premium to Lessor and Costs of obtaining Lease.
- (3) Cost of sinking Pits and driving Main Headings underground.
- (4) Construction of Roads and Sidings above ground.
- (5) Pit-head Gear, Hauling and Pumping Engines, Screens, and other Fixed Plant.
- (6) Buildings on the surface, including Engine-houses, Workshops, and Offices, &c.
- (7) Cottages occupied by workmen.

I do not think any useful purpose would be served by dividing this asset into sections so as to show the Leaseholds separately from the other items, or to distinguish the Buildings from the Machinery and Plant. We must bear in mind that the whole capital expenditure is made for the sole object of obtaining a certain definite area of coal deposits, and that when these deposits are exhausted there will be practically no asset to represent the original outlay, the selling value of the machinery and plant when the coal is worked out being so greatly reduced as to be unimportant. Even if the freehold of the land be vested in the company, its value after the mineral is exhausted will probably be small, and the workmen's cottages and other buildings may become of little value when there are no workmen to occupy them, which will probably be the case when the coal is worked out.

The most convenient course, therefore, is to keep all the capital expenditure, as above stated, in one account, and to raise a Reserve Fund on the other side calculated to redeem the outlay before the lease terminates or the mineral is exhausted.

Some caution is necessary in dealing with additions to capital expenditure. When a new colliery is opened out the outlay underground includes—

- (a) Sinking one or more Pits.
- (b) Opening the Main Headings.
- (c) Extending the Underground Workings generally.
- (d) Providing Tram-lines, Wagons, &c.

If you will look at the diagram of underground workings, which is attached to the accounts, you will see that for a certain space round the base of the pits the coal is left to form a pillar to support the pits, and that the workings of the seam extend in various directions for a certain distance from the boundaries of the shaft pillar. The tunnels or headings through the pillar are arched in stone or brick to make a firm support to the strata above. The outlay in sinking the pits, and making and arching these tunnels, are part of the initial cost of the colliery. Beyond this point the coal-field may be worked in two ways. First by extending the workings gradually from the shaft-pillar in all directions until the boundary is reached, leaving smaller pillars (*i.e.*, square masses of undisturbed coal) at regular intervals, and then working back, removing the pillars as you retire from the boundaries, towards the pit bottom. This is the usual system. The other plan is to drive headings in several directions to the boundary, and then to work back to the pit, removing all the coal at one operation, leaving no pillars. I understand that the latter is ultimately the most profitable, but it involves a large expenditure of capital at the commencement.

If the first system is adopted the work of development goes on concurrently with the raising and sale of coal, and capital and revenue expenditure become intermingled. It is usual to charge all expenditure to Capital Account until a point is reached when the workings are so far extended that a good quantity of mineral can be raised with regularity. Up to this point all proceeds of coal sold are credited to Capital, thereafter the Capital Account is closed, and the cost of development is charged to Revenue.

In the other system the whole cost of driving the main headways to the boundary (*viz.*, to point B in diagram) is charged to Capital, and as soon as the face of coal is opened out the Revenue Account is commenced and the Capital Account closed.

Care must therefore be exercised to prevent the Capital Account from being overburdened by this expenditure on opening out, for if times are bad, or the seam proves to be a bad one, there will be a temptation to keep the Capital Account open after the development has reached a point at which the Revenue Account ought to bear all further cost.

If the colliery is laid out upon the second system, there is no objection to charging Capital with the cost of all the main headings, because they then form part of the initial capital expenditure, and, as we shall see presently, these are redeemed out of Revenue during the life of the colliery by a Redemption Fund.

There are, however, in almost all collieries occasions arising from time to time when it is necessary to incur special expenditure for underground development—such as extending airways, driving through a fault, or putting in mechanical hauling gear. The management may wish to add such expenditure as this to the Capital Account, on the ground that it presses heavily upon one year's profit to pay for the extension or improvement out of Revenue. It will be necessary to guard against permanently burdening the Capital Account with expenditure of this kind, the benefit obtained being soon exhausted. The only safe course, in my opinion, is to charge all such improvements and extensions to Revenue, if not the whole in one year, at any rate to write it off by instalments over a limited number of years.

Where a large fault is known to cut across a property, as shown in the diagram, it is sometimes considered advisable to drive a main heading across it at the commencement of operations, and include it in the initial capital expenditure; but if this operation is deferred to a later date, it would be best to write off the cost by instalments, so as to clear it out of the Capital Account by the time the mineral lying beyond the fault is worked out.

The movable plant will include the following:—

- (1) Mine Wagons, and other movable plant in use underground.
- (2) Loose Tools in use in Workshops.
- (3) Horses, principally underground.
- (4) Locomotives and Railway Wagons.

The first two items will be constantly renewed out of Revenue, and should be inventoried and valued at the end of each year. In practice, however, this is difficult, and is not often done. It is usually considered sufficient that the requirements of the colliery are met by keeping these two classes of movable plant in good working condition, and maintaining the number of articles in use. The horses, however, can easily be inventoried and valued, and this should be done.

Locomotives and railway wagons should have a proper rate of depreciation written off.

#### *Stock-on-Hand.*

Materials and Stores on hand are, of course, valued at cost. It often happens that the workshops of a colliery contain a large quantity of duplicate parts and reserve plant, some being old machinery and plant taken out of the pits and retained for future use. It will be necessary to see that old plant of this kind is not allowed to unduly accumulate, and that all obsolete material is written down sufficiently.

Stocks of coal are not usually large in quantity. It is rarely that the mineral is placed on the ground, because of the expense of handling and re-loading, and also because exposure to sun and air diminishes its value. Stocks in railway wagons sometimes accumulate, but, of course, there is a limit to the quantity which can be stored in this manner, consequently the valuation of the mineral stock does not usually have an important effect upon the Trading Account. It is usual to value it at the net selling price, or under. Of course, cost would be more correct theoretically, but there is the difficulty that the stock is in two forms, large and small, while the cost can only be ascertained for the bulk before screening. A satisfactory basis of value is to take actual sale price, less Railway Carriage, Wagon Hire, Discounts, and Commissions, and then make a further deduction for estimated profit, so as to leave a margin between stock price and the net selling price at the colliery.

#### *Trading Account.*

The form which is in your hands is practically a half-yearly Cost Account, showing comparative figures for the previous year, and rates per ton throughout. It will be found in practice to be a great advantage to have these details before you. Many of the items necessarily vary according to the quantity of mineral raised, and it is only

by working out the rate per ton that a reliable comparison can be made.

I need hardly point out how important these comparative rates are as a guide to the management in the conduct of the business, and as a means of detecting errors and irregularities.

If, therefore, we can induce our clients to have Trading Accounts prepared somewhat in the form now submitted, we shall be helping them towards the successful conduct of their business.

The management will, no doubt, prepare every month a Cost Account, by which they will arrive at the cost per ton of coal, and will form an estimate of profits month by month. In this Cost Account they will divide the wages under special headings. This is a matter more for the management than for the auditor, but the Trading Account will prove a valuable check upon the monthly Cost Accounts, and a summary of these should be made and compared with the Trading Account. By this means the monthly costs are kept up to the mark, as the cost clerk knows that he will have to prove his figures at the end of the half-year.

A form of Cost Accounts is given by Mr. A. A. James in his paper already referred to.

#### *Sales.*

The statement on the credit side of the Trading Account is given in detail, in order to show a useful method of arriving at the total weight of mineral raised and the net amount realised therefor at the pit's mouth. It shows the average price realised after deducting all charges made to purchaser or covered by the selling price. In order, however, to get the actual weight of coal handled we must add the coal used for boilers at the pit, and other purposes, which is here credited as a sale at a fixed price and debited on the other side as an item of cost. This is, of course, a necessary entry, if we are to arrive at the true cost per ton.

To enable the particulars shown under the heading of *Sales* to be readily obtained, the Sales Day Book should be kept in a form giving columns for Carriage, Wagon Hire, and Allowances, &c., so that both the gross amount chargeable to the purchaser and the deductions and net amount to be credited in the Trading Account may be ascertained and summarised monthly. You will readily be able to prepare a suitable form.

#### *Profit on Wagon Hire.*

You will notice that the wagon hire on coal deducted above from the sales of coal is here brought down as a credit to Wagon Hire. Similarly the wagon hire in respect of pit wood is added to the cost of that article on the other side and credited to the wagons, and after deducting Repairs and Depreciation we get the profit earned. The

rate earned per wagon is a useful figure for comparison with previous periods, as it shows whether the wagons have been kept in constant employment or not.

#### *Local Sales.*

They are sales of coal at the pit to the company's employees and others. The profit is arrived at thus—

Actual Sales	tons	..	..	£
Credited Colliery	„	..	..	
At	per ton (fixed rate).			
<hr/>				
Gross Profit	..	..	..	
Deduct Wages at Sale Yards	..	..	..	
Net Profit	..	..	..	£

The amount credited to colliery at the fixed rate has already been included under Sales of Coal as above.

#### *Brickworks.*

This item serves to illustrate a class of subsidiary manufactures which are often associated with collieries, and others are stone quarries, gas works, farms, &c.

#### *Cottage Rents.*

This includes the rents of houses occupied by officials and workmen. The receipts under this head should, of course, be carefully verified when vouching the Cash Book. The principal part of the money is received by deduction from the workmen's wages, and can be checked by reference to the certified Pay Sheet, but an additional check should be obtained by keeping a record of the number of houses and gross rentals due, and deducting any known or certified allowances for empties and irrecoverables.

#### *Shortworkings.*

This is a term applied to dead rents paid in excess of the royalties due in respect of coal raised. You will find this subject fully explained in the paper by the late Mr. A. A. James.

Colliery leases usually provide for a fixed or "dead" rent, merging in a royalty, calculated at an agreed rate per "acre" of coal worked, or more generally per "ton" of coal raised, and if the quantity raised in any one year is less than the quantity which at the agreed royalties will cover the dead rent, the deficiency can be carried forward for a certain number of years, and is available to meet royalties on coal subsequently raised, if in excess of the quantity covered by the minimum or dead rent.

Now the Trading Account should only be charged with royalty on the coal raised during the period of the account,

the excess rent paid must therefore be carried forward in suspense, and appears in the Balance Sheet as Shortworkings. It is, in fact, rent paid in advance, and is similar in character to the item under the head of "Insurance, &c., unexpired," with which we are all familiar.

Care must, however, be taken not to carry forward beyond the limit of time fixed by the lease (say three years), and any shortworkings which may have become irrecoverable by effluxion of time must be written off.

It may also in some cases be a question whether any shortworkings should be carried forward at all, or whether part should be written off. Circumstances sometimes arise where, although by the terms of the lease there is power to redeem the shortworkings, there would be so much difficulty in raising the required quantity of coal within the prescribed time that there is practically no prospect of the arrears being worked off; as for instance, at the commencement of a lease where delay has taken place in sinking the pits, and consequently no coal is raised for several years. In such a case the time for working off shorts may expire before the colliery has been in full work for a sufficient time to overtake the dead rents, and the question will arise whether any or what portion of the shortworkings may safely be carried forward.

It thus becomes necessary to carefully consider both the actual position as regards the terms of the lease, and the prospects of the colliery generally before entering shortworkings as an asset in the Balance Sheet.

Details of the item are given in our *pro forma* Balance Sheet, and will help to make this point clear.

You will see that in this particular case the quantity worked in 1905 has nearly covered a year's dead rent, and therefore it may fairly be assumed that, as the working face will be extended each year, it will show a substantial increase in quantity, and next year's dead rent will be more than covered by the royalty on the mineral raised. In these circumstances the balance of £1,200 will be ultimately all worked out, and may be carried forward with safety.

#### *Wages.*

This is the most important item on the payment side of the Cash Book. It comprises a very large part of the expenditure of every colliery, and in a particular case I find that wages are nearly 70 per cent. of the total cost of raising coal.

The verification of the payment of wages forms, therefore, an essential feature of the audit.

It is important that the Wages Sheets should be properly

certified. It is sometimes a difficult matter to get our friends to carry this out in the way it ought to be done, but I will put before you the form of certificate which I think should be appended, it being, of course, understood that these forms may be modified to suit the circumstances of a particular case.

There appear to me to be three different certificates which should be given:—

- (a) The principal wages clerk, under whose supervision the men's time, or quantity of coal, is entered up, the proper rates of pay appended, and the amounts payable calculated. He should sign a certificate in the following form:—

"I certify that the foregoing Pay Sheet has been prepared by me (or under my supervision), that the rates and calculations are correct, and that the amount payable is £ ."

- (b) The cashier, who either with himself or his assistants actually pays the men, and is responsible for handling the money, should give a certificate in the following form:—

"I certify that on \_\_\_\_\_ I paid the men whose names appear in the foregoing Pay Sheet the sums set opposite their names in the last column, except the following, who did not present themselves." [Here follows a list of the names and amounts not paid.]

- (c) The manager, who is responsible for the general working of the mine, and whose duty it is to know the rates of wages from time to time paid, and to arrange the number of men to be employed, &c., should give a general certificate of correctness, thus:—

"Examined and approved.

\_\_\_\_\_, Manager."

Sometimes in small collieries the preparation of the Pay Sheet and the payment of the men is performed by the same clerk. This should be avoided, if at all possible; but if it be necessary that the wages clerk should also pay, it can generally be arranged for someone to be present at the pay, and to join in the certificate (b).

Another feature of the Pay Sheet is the deductions; as, for instance, Rent, Stores, Doctor, Sick Club, &c. By far the best arrangement is to draw from the bank the net amount payable, and to draw separate cheques for such of the deductions as have to be paid away to outsiders, the payment of such cheques being duly vouched by receipts, but sometimes it is found more convenient to

draw the full amount, and to pay over the various deductions in cash. In such cases the payment of these amounts to the proper persons should be carefully vouched.

With regard to unpaid wages, or money left in the cashier's hands at the close of the pay, the list to be given in the cashier's certificate will show these amounts, and care will have to be taken to see that these are repaid to the coffers of the company.

Unpaid wages may be subsequently paid away, but all such payments must be vouched by orders signed by the overman and initialled by the manager. Payments on account, made before pay-day, will be vouched in a similar way. Any irregularity in this part of the vouching must be most carefully noted and watched, remembering the large amount of cash passing from hand to hand, and the facilities for fraud which are thus afforded. Any balance on Wages Account in the cashier's hands should be produced and counted along with his petty cash balances.

#### *Depreciation and Sinking Funds.*

In all mining enterprises there are naturally two classes of depreciation to be considered:—

- (1) Wear and Tear and Depreciation of Machinery and Plant.
- (2) Exhaustion of the Minerals won.

With regard to the former, I need not offer many observations; the considerations which have to be borne in mind in dealing with the machinery and plant of other works will apply, and regard must be had to whether repairs and renewals are carried out to such an extent as virtually to cover the depreciation due to wear and tear or not. In large collieries, where there are several pits, and a large amount of machinery working, there will be renewals constantly taking place, which, if charged to Revenue as they occur, will go a long way towards meeting the depreciation.

With regard to all the loose plant, and several of the other items, it will be found, I think, that, by charging all repairs and renewals to Revenue, and keeping the plant in good condition, depreciation will be provided for; but in the case of boilers, engines, and some other fixed plant, depreciation should be allowed. The life of steam boilers varies a good deal with the pressure of steam and the quality of the water. Sometimes the life of a boiler may be taken to extend to twenty years, and a 5 per cent. rate will be sufficient; in other cases a higher rate will be desirable.

With regard to Buildings, Heapstead Pulleys, Frames and Screens, Surface Railways, and Underground Tramways, these, if constantly maintained and renewed, may

be considered as lasting the life of the colliery, and therefore covered by the General Capital Redemption Account.

I have already pointed out that, whenever the coal measures included in the area leased to the colliery are worked out, or when the lease expires, the whole of the capital expended in sinking shafts, driving headings, erecting plant, &c., will become valueless, and the plant itself will be worth little more than old iron prices.

It is therefore desirable to arrive at a basis for calculating a Sinking Fund for the redemption of capital expenditure, so that the whole amount laid out may be written off by the termination of the lease, or by the time when all the minerals are exhausted, whichever shall happen first.

This Sinking Fund may be arrived at by estimating the number of years within which the minerals will be worked out, and spreading the capital expenditure over this period, but it is evident that the result arrived at will depend upon two estimated figures:—

- (a) The total quantity of coal in the coal-field.
- (b) The annual output.

The former of these figures can be estimated with tolerable accuracy by the mining engineer.

The second figure, "annual output," is subject to much uncertainty, and is liable to fluctuation in accordance with the state of trade and other circumstances.

A more satisfactory way of calculating the Sinking Fund is, therefore, to fix a tonnage rate, so that each ton of coal raised shall bear its share of the initial expenses for pit-sinking and development.

Assuming that £100,000 is expended upon such initial expenses, and that the estimated total quantity of coal contained in the coal-field is 24,000,000 tons, a rate of 1d. per ton will suffice to write off the whole outlay by the time the coal is worked out.

If a tonnage rate be used it has the advantage of regulating the amount of Sinking Fund in proportion to the quantity raised, so that, when from any cause the raisings are reduced, the amount charged for Sinking Fund will also be diminished. On the other hand, this method of calculation does not take into account the interest that should accrue upon the sums set aside from year to year.

If the 1d. per ton were invested at 3 per cent., and the interest accumulated until the end of the estimated period, the amount obtained would be considerably in excess of that required, and if, instead of investing the money outside the business, it were employed in reducing capital, we should have in the latter part of the existence of the

colliery such a small capital that the profits (unless also considerably reduced) would be out of proportion to the capital, and very large dividends would be paid, a result which might be very satisfactory to shareholders then remaining, but which would be hardly fair to those who had sold out earlier.

It is therefore desirable to arrive at a tonnage rate which will provide such a Sinking Fund that, when the amounts provided from year to year are accumulated at compound interest, there will be a sufficient sum at the end of the period to cover the initial outlay.

We can only arrive at this tonnage rate approximately, and in the first place we have to assume that the minerals will be exhausted within a certain number of years.

Taking as before the initial outlay at £100,000, the total quantity of coal won at 24,000,000 tons, and assuming an annual output of 600,000 tons, the life of the colliery would be forty years.

The annual Sinking Fund required during these forty years in order to redeem the initial outlay, allowing compound interest at 3 per cent. per annum, would be £1,326 4s. 9d. Now, inasmuch as we have assumed an annual output of 600,000 tons, we may conclude that a tonnage rate of  $\frac{£1,326 \text{ 4s. 9d.}}{600,000}$  or 0.53d. will suffice if the

Sinking Fund be duly invested at 3 per cent. interest. It follows that, by allowing interest, a tonnage rate of a little over  $\frac{1}{2}$ d. per ton will suffice, instead of 1d. per ton, as in the previous calculation.

The only weak point in this system of calculating the Sinking Fund is that it will only work out accurately when the life and annual output of the colliery are approximately the same as that estimated. If the life be longer, and the annual output smaller, more interest will accrue, and the Sinking Fund will prove larger than required; if the life be shorter, and the annual output greater, the interest will be less, and the Sinking Fund may prove inadequate. It is therefore desirable in making the calculation to assume an annual output that shall err on the side of being larger, rather than smaller, than the actual.

With regard to the estimation of the quantity of coal remaining to be raised, that is a matter more within the province of the colliery manager than the accountant. It may, however, be of interest to know how the calculation may be made.

The table given in Statement E will enable the amount of coal remaining to be worked to be estimated, if the following data are given:—



Specific gravity of the mineral.  
Average thickness of seam.  
Area remaining unworked.

In the *pro forma* accounts now before you a simple tonnage rate, without accumulations of interest, has been adopted, and some colliery owners will be found to prefer this plan, but I think that the adjusted rate per ton, which takes into account the accumulating interest, is the most correct system, and one that does not involve any serious complications.

When dealing with Colliery Accounts important points will often arise in connection with Accident Insurance, Coal Owners' Associations, Strike Insurance, and other matters upon which I have not time to enter, but which I

shall be glad to discuss with you if you feel disposed to ask any questions. It would also have been possible to append to this paper a considerable number of forms—such as Monthly Cost Accounts, Stores Received and Stores Issued Book, and Wages Sheets. These will be found appended to the lecture by the late Mr. A. A. James, to which I have already referred.

The proper keeping of the Stores Books is most important, and the auditor should always ascertain that a proper system of check is in use; but my object to-night has been to discuss with you some of the important points with which the accountant and auditor has to deal, leaving details and forms to be worked out as occasion may require.

### Statement A.—

## THE BLACK-VEIN COLLIERY COMPANY, LIM.

### BALANCE SHEET, at 31st December 1905.

LIABILITIES.		£	s	d	£	s	d	ASSETS.		£	s	d	£	s	d	
<i>Share Capital—</i>																
Authorised 30,000 shares of £10 each ..		£300,000	0	0												
Issued 20,000 shares of £10 each, £5 paid up .. .. .		..	..	..	100,000	0	0	<i>Leasehold Mines, Buildings, and Fixed Plant—</i>								
<i>Mortgage Debentures @ 5% .. .. .</i>		..	..	..	25,000	0	0	Amount at 30th June 1905 .. .. .		102,762	3	6				
<i>Sundry Creditors .. .. .</i>		..	..	..	19,667	17	10	Add Expenditure during the ½-year :		£	s	d				
<i>Sundry Liabilities—</i>																
Royalties, Rents, Wages, and Interest due, or accrued .. .. .		..	..	..	4,763	17	8	Extension of Sidings ..		409	15	5				
<i>Creditors for Instalments on Wagon Contracts—</i>																
Estimated Liability at 30th June 1905 ..		10,125	9	3				New Cottages and Workshops .. .. .		1,182	11	9				
Deduct Principal repaid during ½-year ..		864	11	4			9,260	17	11			1,592	7	2		
<i>Reserve for Redemption of Capital—</i>																
Amount at 30th June 1905 .. .. .		15,283	14	9			10,160	17	4					104,354	10	8
Add Tonnage Instalment, 1d. per ton of raisings .. .. .		877	2	7												
<i>Profit and Loss Account—</i>																
Amount at credit 30th June 1905 .. ..		2,859	1	8												
Deduct Dividend at the rate of 5% per annum, paid 11th August 1905 .. ..		2,500	0	0												
Add Profit for the ½-year .. .. .		359	1	8												
		2,494	12	11			2,853	14	7							
</																

**Statement B.—**

THE BLACK-VEIN COLLIERY COMPANY, LIM.

Dr.

TRADING ACCOUNT for the Half-year ending 31st December 1905.

**Cr.**

[illegible]

**Statement C.—**

THE BLACK-VEIN COLLIERY COMPANY, LIM.

*Dr.*

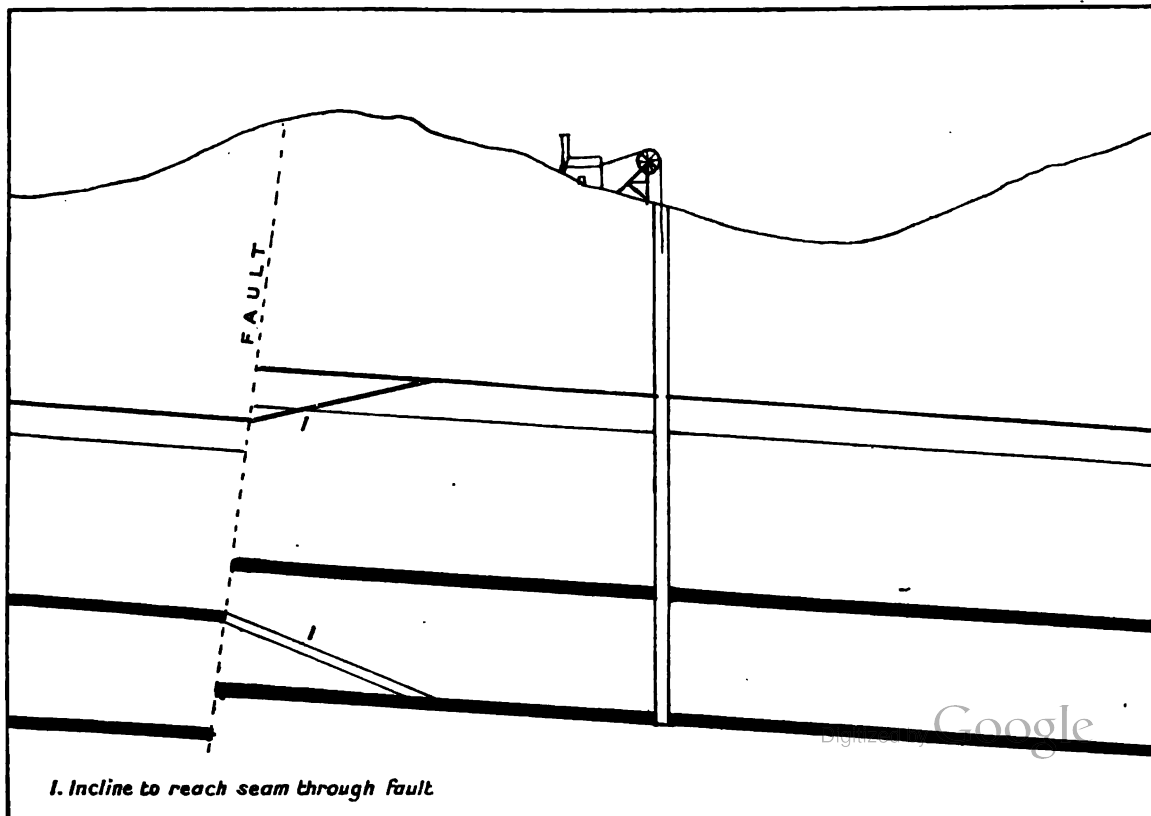
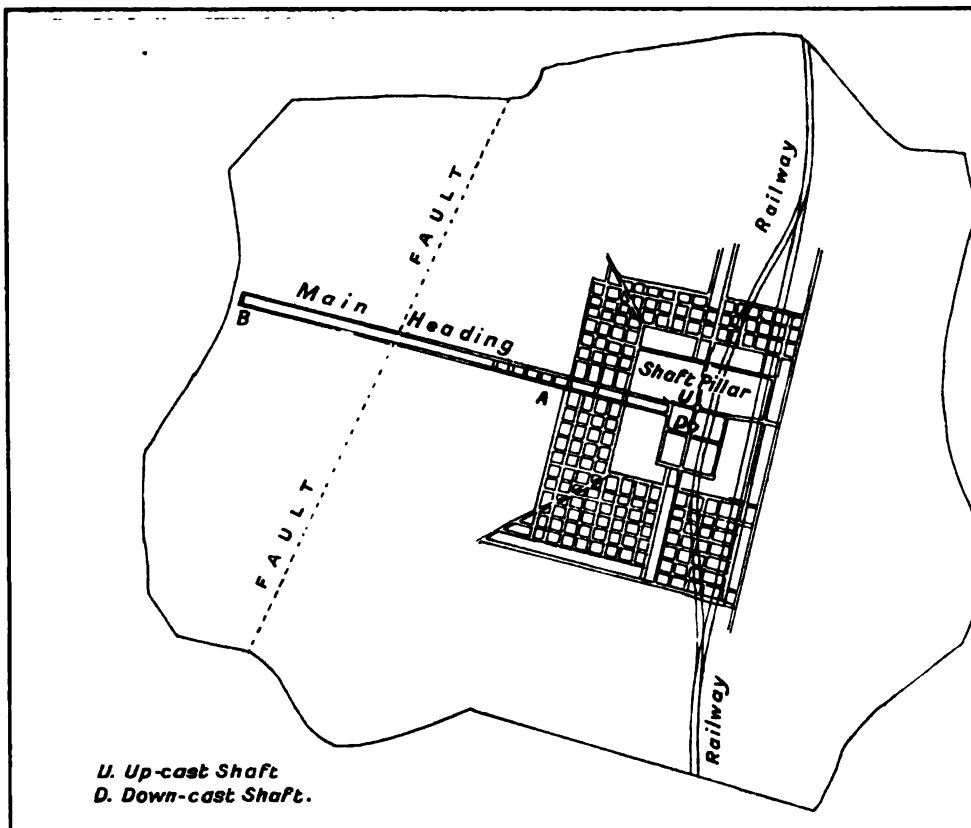
**PROFIT AND LOSS ACCOUNT** for the Half-year ending 31st December 1905.

**Cr.**

Half-year ending		Half-year ending	
	£ s d		£ s d
Interest on Debentures .. .. .	625 0 0	Balance from Trading Account, being Profit for the Half-year .. .. .	4,689 14 1
Interest on Instalments under Wagon Con- tracts .. .. .	541 12 4	Transfer Fees .. .. .	5 17 6
Directors' and Auditors' Fees .. .. .	360 0 0		
Income Tax .. .. .	597 4 4		
Shortworkings irrecoverable and written-off ..	77 0 0		
Balance, Profit carried to Balance Sheet ..	2,494 12 11		
	<u>£4,695 11 7</u>		<u>£4,695 11 7</u>

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$$131.668 \times 27 \times 20.58125 = 73,167 \text{ tons.}$$



## The Rights of Partners *inter se*.

By SIDNEY S. DAWSON, F.C.A.

A PAPER read to the Chartered Accountants' Student Societies of Sheffield, Birmingham, and Liverpool.

It must be a considerable time since I last read a paper to accountant students from manuscript, for during recent years I have endeavoured to fulfil my obligations as a lecturer "on the list" of the Union by speaking from a few notes. No doubt my constant teaching has rendered this possible; certainly the increasing calls upon my time have made it necessary. But it has been represented to me by those presumably well qualified to judge, that if lecturing from notes is to become a general practice, the literature of the profession will contract as rapidly as it expanded; particularly if on that account a paper upon some point involving a variation of previous notions cannot be reproduced in the columns of *The Accountant*.

As my present lecture comes under the latter heading, I have prepared it at length accordingly.

When Mr. T. A. Welton, F.C.A., read his paper upon this subject at the Conference of Chartered Accountants held in Liverpool in the autumn of 1904, he apparently based his remarks upon the decision in *Garner v. Murray* (1904, 1 Ch. 57). But, in common with many other accountants who have in the meantime expressed their views upon the matter, I venture to suggest that the precise bearing of the decision in question was not at that time fully recognised.

Mr. Welton illustrated "the rule of law to which he took exception" thus:—

Capital	Profits Divisible and Drawn as under, equal Shares.	Losses subsequently sustained divisible as under, <i>pro rata</i> as to Capital.
£	£	£
A.—50,000	20,000	25,000
B.—50,000	20,000	25,000
C.—20,000	20,000	10,000
<u>£120,000</u>	<u>£60,000</u>	<u>£60,000</u>

Complaint was made that, under this alleged rule of law (whereby profits were divided according to certain proportions but losses were allocated upon another principle), if the firm had made £60,000 profits and subsequently sustained £60,000 losses, C. would gain £10,000 at the direct expense of his co-partners.

Neither the decision in *Garner v. Murray* nor the provisions of the Partnership Act can be quoted in support of such a method of dividing losses. Suppose, instead of a

loss of £60,000 there had been a loss of £80,000, and profits were divisible as to two-eighths, three-eighths, and three-eighths. This loss would be borne by the partners in the same proportions as they were entitled to share profits, whether the partnership was being continued (Section 24 (1)) or being dissolved (Section 44).

Thus:—

A. Capital £50,000 less $\frac{2}{8}$ share losses £20,000, leaving £30,000 due to A.		
B. " 50,000 " $\frac{3}{8}$ " " 30,000 " 20,000 " B.		
		50,000
C. " 20,000 " $\frac{3}{8}$ " " 30,000 (def'cy) 10,000 payable by C.		
<u>£120,000</u>	<u>£80,000</u>	<u>£40,000</u>

The result is that £120,000 of capital has been reduced to £40,000 by reason of losses amounting to £80,000, but A. and B. will recover their respective balances of capital, because C. must contribute (under Section 24 (1), or Section 44, as the case may be) his deficiency of £10,000. But if he cannot contribute the whole or any part of the £10,000, then the amount of loss occasioned by his default must be borne by A. and B. rateably as to capital and not in the ratio in which A. and B. respectively were entitled to profits. Nor does this mean as £30,000 is to £20,000, being the ultimate balances due to them in respect of capital.

The losses, having occasioned deficiencies of capital, must be contributed either actually or in account in proper shares by A. and B. (Section 44 (b)) notwithstanding C.'s default, before any application of the assets can be made, and before any distribution to each partner rateably of what is due from the firm to him in respect of capital.

Thus:—

Capital Accounts.	£	Assets.	£
A., Capital .. .. .	50,000	Assets of Firm remaining after Losses .. .. .	40,000
B., Do. .. .. .	50,000	Contribution of A. to deficiency of Capital .. .. .	20,000
		Contribution of B. to deficiency of Capital .. .. .	30,000
		Amount due from C., but irrecoverable .. .. .	10,000
	<u>£100,000</u>		<u>£100,000</u>

Therefore (1) although A.'s share in the profits was  $\frac{3}{8}$ ths, and B.'s share was  $\frac{3}{8}$ ths, and (2) although A.'s balance of capital, after deducting losses was £30,000 and B.'s balance £20,000, the loss occasioned by C.'s default must not be borne by A. and B. respectively, either as 2 is to 3 (profits) or as 3 is to 2 (balances of capital), but in proportion to their amounts of capital *after* any deficiency thereof has been contributed, such proportion in this case being that of equal shares. Thus:—

## A.'s SHARE.

Capital .. .. .	£50,000
Less $\frac{1}{2}$ Loss of C.'s Contribution .. .. .	5,000
	<u>45,000</u>
Less Own Contribution .. .. .	20,000
Net Amount Receivable .. .. .	<u>£25,000</u>

## B.'s SHARE.

Capital .. .. .	£50,000
Less $\frac{1}{2}$ Loss of C.'s Contribution .. .. .	5,000
	<u>45,000</u>
Less Own Contribution .. .. .	30,000
Net Amount Receivable .. .. .	<u>£15,000</u>

The £40,000 of assets of the firm remaining after the losses sustained had been ascertained would, therefore, be distributed among A. and B. as to £25,000 and £15,000 respectively.

The foregoing is based upon the decision in *Garner v. Murray*, where it was held by Joyce, J., that the loss sustained by some of the partners, because of the default of another partner when adjusting their respective rights *inter se* after all the debts due to outside creditors have been paid, must be distinguished from a loss of the firm as a whole, and not be borne by the non-defaulting partners in ratio to the proportions in which they were entitled to share profits, but rateably according to the amount of capital respectively due from the firm to them, due account being taken of the contributions from each partner in respect of any deficiency of capital.

The actual figures in *Garner v. Murray* were as follow:—

Capital Accounts.	Assets.
Garner .. .. . £2,500	Cash .. .. . £1,916
Murray .. .. . 314	Wilkins (overdrawn) £263
	Deficiency of Firm .. 635
	<u>898</u>
	<u>£2,814</u>

Wilkins was unable to pay anything. Profits had been divisible equally. The generally accepted solution of the foregoing had hitherto been as follows:—

Capital Accounts.	Assets.
Garner .. .. . £2,500	Cash .. .. . £1,916
Less $\frac{1}{2}$ share of £898 .. 449	Murray, $\frac{1}{2}$ share of £898 .. 449
	Less Capital .. 314
	<u>135</u>
	<u>£2,051</u>

Thus Murray would pay in £135, and Garner would take the whole £2,051. But the distinction made by Joyce, J.,

in this case necessitated a distribution upon different principles, thus:—

## STAGE I.

Capital Accounts.	Assets.
Garner .. .. . £2,500	Cash .. .. . £1,916
Murray .. .. . 314	Garner's Contrib'n to Capital, deficiency £212
	Murray's ditto .. 212
	<u>424</u>
	Wilkins, overdrawn .. 263
	Share of deficiency .. 211
	<u>474</u>
	<u>£2,814</u>

## STAGE II.

Capital Accounts.	Assets.
Garner .. .. . £2,500	Cash .. .. . £1,916
Less $\frac{1}{2}$ of £474 .. 422	
Less Contribution due .. .. . 212	
	<u>1,866</u>
Murray .. .. . 314	
Less $\frac{1}{2}$ of £474 .. 52	
	<u>262</u>
Less Contribution due .. .. . 212	
	<u>50</u>
	<u>£1,916</u>

In the course of the discussion upon the *Garner v. Murray* decision the solution of Professor Dicksee in his "Advanced Accounting," Second Edition, p. 66, has received some attention from those who have written upon the question, and perhaps this paper can hardly be deemed to review completely the situation without some reference to Professor Dicksee's views. It is with some diffidence that I will discuss those views, for the Biblical supplication "My desire is . . . that mine adversary had written a book" looms largely before me. As an author I have felt the lash of the critic's whip, and I will, therefore, discuss Professor Dicksee's treatment of the *Garner v. Murray* decision with circumspection.

In the words of a leading article in *The Accountant*, it is impossible to make much sense of the official version of the *Garner v. Murray* decision, while the figures are hopelessly muddled, and to compare the figures of one report with those of another merely tends to make confusion worse confounded, but Professor Dicksee in his own work sets out the original position in the form in which accountants generally have accepted the true position to have been, namely:—

## BALANCE SHEET.

Liabilities.	Assets.
Ord A., Capital .. .. . £2,500	Cash .. .. . £1,916
Ord B., Do. .. .. . 314	Ord C., Capital overdrawn 263
	Deficit .. .. . 635
	<u>£2,814</u>

He then increases the cash by the amount of two-thirds of the deficit, say £424, being the shares thereof for which A. and B. are liable, but instead of decreasing the deficit to the extent of these contributions, he adds £212 to each of the capital sums, thus:—

Liabilities.			Assets.		
A., Capital ..	£2,500	£	Cash ..	£1,916	£
Contribution to deficiency ..	212		Contributions of A. and B. ..	424	
	2,712		Deficiency as before ..	2,340	
B., Capital ..	314			898	
Contribution to deficiency ..	212				
	526				
	£3,238			£3,238	

The cash is then distributed thus:—

A., <del>8348</del> of £2,340, less £212, say .. ..	£1,748
B., <del>596</del> of £2,340, less £212, say .. ..	168
	£1,916

In the action the Master certified that the sums due to the plaintiff and defendant were £2,500, and £314, respectively. The question arises whether the Master in certifying the sums due to A. and B. had, or had not, already taken account of the £212 which each of them would have to contribute to the deficiency of capital. If he had so taken account, Professor Dicksee's solution can hardly be supported; if he had not so taken account of the contributions of A. and B. to the deficiency, there is a little to be said for Professor Dicksee's view, but from a bookkeeping point of view, at least, it is open to objection, for partners cannot be said to be contributing to a share of a deficiency and by so doing increasing the cash and their capital *pro tanto*, leaving the deficit as before.

Professor Dicksee has stated that his reason for hesitating to accept the solution in *Garner v. Murray* is on account of the practical difficulty of distinguishing between losses of the firm and losses of the partners individually when adjusting their rights *inter se*. For myself, I am of opinion that the irrecoverable portion of any sum ultimately found to be due from a partner is a loss of the other partners, and not a loss of the firm; and whether the unpaid contribution was required to make up trading losses, or excessive drawings of cash, or unpaid accounts in respect of goods purchased from the firm, or whether the indebtedness occurred during the course of the partnership, or during the period of the dissolution, the circumstance does not affect the principle of law. Nor does the decision create any distinction between capital and revenue losses of the firm as a whole. Whether the deficiency is caused by a trading loss, or a shrinkage in value and consequent loss on the realisation of fixed assets, the different principles upon which the losses of the firm

and the losses of some of the partners are respectively to be dealt with are unaffected.

Another point which has suggested difficulties to some accountants who have written upon this question is the bookkeeping device necessary to eliminate the unrecovered balance due from the defaulting partner, and it is a little surprising to find in a leading article in *The Accountant's Journal* for November last the following paragraph:—

"As to what is to be done with C.'s balance in the books of account the text-books are silent, the Courts are silent, and hence it is difficult to make any entry, since the peculiar effect of the decision is beyond the canon of the bookkeeper's art."

But surely it must be recognised that if the irrecoverable balance is written off against the other partners rateably as to their capital, it is the same thing from an administrative point of view as distributing the available assets in the same proportions; or, conversely, after the Capital Accounts of A. and B. have been debited with the cash paid to them, which represents their rateable shares in the available assets, there will be a balance still due to each of them which will exactly represent their rateable shares of abatement to meet C.'s deficiency, so that C.'s deficiency may then be written off against A. and B. accordingly, thus closing every account in the books to the complete satisfaction of the most punctilious bookkeeper.

In this particular connection I would like to express the personal opinion that no transaction is beyond the canon of the bookkeeper's art; in other words, *that which can be done can be recorded*. Of course, we know that there are some things prescribed by law as capable of being done (e.g., Section 3 of the Companies Act of 1880) which we, as accountants, do not regard as possible. In such a case, the bookkeeper's art would fall short of the calls upon him, simply because the "transaction" in question, though legally permissible, was in practice not possible.

Having dealt with the matter from an accountancy and an illustrative point of view, I will now endeavour with all deference to take up the question from the legal and, in this particular case, the argumentative standpoint. If we can avoid it we do not care, as accountants, to deal publicly with the purely legal portion of a question, but I plead at least two extenuating circumstances for making an exception in this instance. One is that Section 44 of the Partnership Act of 1890 is as mixed a question of law and account as can be conceived. The other is that I shall not engage myself, as other accountancy writers have done, either in challenging the soundness of the decision of Joyce, J., or in doubting the practicability of carrying it out.

Joyce, J., decided in *Garner v. Murray* that after a partner had fulfilled his obligations to outside creditors and had con-

tributed his *own share* of capital deficiency (if any) he was not liable on a dissolution to contribute to a defaulting partner's deficiency, because the word "losses" in Section 44, paragraph (a), meant losses of the firm, and as the debt of such defaulting partner was not a debt due to the firm, the loss of it was not a "firm loss."

Section 39 would appear, however, to create some difficulty, for it provides that on the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payments applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm.

Now if, after the outside creditors have been paid, a partner has capital to his credit, and it can be regarded as legally possible for there to be a sum due from a partner, *qua* partner, to the firm, and that it is legally permissible on a dissolution to deduct the sum so due to the firm from the sum which is due to the partner in respect of capital, why should it be contended where there is a sum due from a partner, *qua* partner, to the firm, but no *contra* account from which it can be deducted, that such debt is not a debt due to the firm, so that its non-recovery is not a loss of the firm?

Again, Section 44 (Clause (b), Sub-clauses 2 and 3) refers to the amounts which are due from the firm to each partner in respect of advances and in respect of capital.

And this also is after the outside debts have been paid. Surely, therefore, if one partner can be a creditor of the firm of which he is a partner after the outside debts have been paid, why can he not be a debtor of the firm, with the result that his default as a debtor would occasion a loss to the firm which would be divisible in the same way as any other partnership loss?

Pursuing this line of argument, there are those who contend (1) that the contributions by the partners to make up the losses and deficiencies of capital referred to in paragraph (b) of Section 44 mean *recoverable* contributions, and (2) that any irrecoverable contribution is a loss or deficiency of capital within the meaning of paragraph (a) of the same section and chargeable against the other partners in the proportion (or rather the ratio) in which they were entitled to share profits.

The foregoing would appear to support *The Accountant* in a leading article in the issue of 14th January 1905, viz.:—

"The confusing part of the decision in *Garner v. Murray* is that it appears to treat losses arising through the inability of a partner to meet his share as being something altogether distinct from the losses sustained

by the firm; but why a partner should—for this purpose—be treated differently (from) any other debtor of the firm is anything but clear."

The answer would appear to be this:—Section 44, if carefully construed and taken as a whole, is self-contained and conclusive upon the point. The deficiencies of capital referred to in Clause (a) mean losses of the firm, while losses of the partners individually are dealt with under Clause (b), Sub-clause 3.

Before passing to the consideration of Section 44 two general points may be mentioned with regard to the distinction between a loss of the firm as a whole and a loss as between partners *inter se*.

It is prescribed that a loss of the firm shall be borne by all the partners in certain proportions, but a loss caused by the default of one of the partners *ex necessitate rei* cannot be borne by that one.

Again, once the solvent partners have contributed their shares of the partnership losses it is equivalent to the *ad infinitum* distribution of the insolvent partner's indebtedness in the ordinary proportions, if the solvent partners are called upon to bear their partner's debt in ratio to their previous shares in the profits—that is to say, to charge a defaulting partner's debt in equal shares against two other partners is equivalent (arithmetically) to writing off the debt in thirds, charging the defaulter with his third, and proceeding *ad infinitum*—a proceeding which Joyce, J., decided was not required by Section 44.

The following propositions with regard to Section 44 of the 1890 Act are therefore submitted:—

- (1) The deficiencies of capital referred to in paragraph (a) mean those arising from losses of the firm as a whole and not losses caused by a partner failing to pay his contribution to a deficiency as between partners *inter se*.
- (2) All losses of the firm, whether on trading or as a result of the realisation of assets on a dissolution—that is to say, whether losses on Capital Account or on revenue or otherwise—are to be borne by the partners in the same proportion in which they were entitled to share profits.
- (3) The section (in harmony with Section 24, Clauses 3 and 4) contemplated that certain sums would be deemed to be the respective amounts of capital of the partners; and, further, that in order to maintain such capital sums, the profits periodically due to the partners would be withdrawn, or, if not withdrawn, would be treated as advances (bearing interest) and distinguished from capital, while losses, when ascertained, would be actually



contributed proportionately by the partners forthwith, and not deducted from their respective capital sums.

- (4) Paragraph (a) prescribes the *proportion* in which losses are to be borne, and the *order* in which the losses are to fall upon the various funds, viz. :—

(1) Profits, (2) Capital, and (3) Contributions by a partner or partners according to the actual state of the accounts. But the *order* in which the *assets are to be applied* is prescribed by paragraph (b), and this paragraph pre-supposes that, so far as the capital is concerned and so far as it is possible, it is the *full amount of agreed capital*, for it provides for the distribution of "the assets of the firm, including "any sums contributed by the partners to make "up losses or deficiencies of capital." It is not suggested that actual payment of a deficiency can be insisted upon in the case of a partner who on balance is really in credit, but that it must be brought into account in order to ascertain the *correct proportions* in which the assets are to be distributed in the event of a deficiency as between the partners *inter se*.

- (5) But it is clearly recognised in Sub-clauses 2 and 3 that the contributions, due from all or any of the partners who not being in credit are liable to make an actual cash payment, *may not be forthcoming*. To say that if all losses and deficiencies of capital were fully contributed all the capital would be ultimately repaid is to advance a simple book-keeping proposition. So the reverse applies; for if a debtor-partner makes default, his co-partners must share in some proportion the monetary measure of his shortcomings. And Sub-clause 3 prescribes the proportion, for it runs thus: "In "paying to each partner *rateably* what is due from "the firm to him in respect of capital." The word *rateably* shows that some default in contributing to a deficiency of capital is possible, and the fact that the assets are divisible *rateably* as to capital actually prescribes the proportions in which the non-defaulting partners are to bear the loss occasioned by the defaulting partner, that is, according to capital and not according to the proportions in which they were entitled to profits.

Remembering (1) that moneys due by the firm to partners in respect of advances in excess of their capital rank in priority to capital when the assets are being administered on a dissolution, (2) that partners are liable to contribute deficiencies of capital in order to adjust the rights of the partners *inter se*, and (3) that any losses arising from the

default of any partner in respect of his levy must fall upon the other partners in proportion to their capital, the matter of the agreement between the partners as to their precise amounts of capital ought to receive more attention from accountants than is apparently the case. The original amounts agreed upon should in all cases appear separately in the books and upon the Balance Sheets of the firm from time to time. It is often found that losses and excesses of withdrawals over profits are charged against the Capital Accounts instead of being paid in by the partners as contemplated by the Act and generally provided by the partnership agreement. Per contra, any excesses of profits over withdrawals thereof are added to the capital sums. Thus, in many Partnership Accounts the Capital Accounts are a fluctuating quantity, and the original sums agreed upon as capital soon lose their identity. Of course, the partners can agree between themselves, and from time to time vary the amounts to be regarded as their capital respectively. They may increase such amounts by paying in further cash, or by transferring part of their shares of profits to Capital Account, or they may reduce the amounts by not paying in their shares of losses or their excess drawings. But it is submitted that as the basis of adjusting the rights of the partners *inter se* is the amount of agreed capital, it is important to know what was the amount *last agreed upon* as such. Therefore the Capital Accounts in a partnership Balance Sheet should always represent the amounts of *agreed capital*, whatever those amounts may be, and whether they should vary or not. Then (1) the amount due to a partner as an advance can be readily distinguished from the sum due to him in respect of capital; (2) the amount (if any) which he is liable to contribute to make up deficiencies of capital becomes more apparent, and (3) the basis upon which the rateable distribution of assets and the consequential apportionment of losses occasioned by the default of any partner on a dissolution can be more satisfactorily ascertained.

Of course, partners can provide in their partnership agreement in the clearest terms possible the method of dividing both profits and losses, whether of capital or otherwise, and whether as a going concern or on a dissolution, for the operation of both sections (24 and 44) can be excluded by any agreement to the contrary between the partners. But where no such contrary arrangement has been made, and more particularly where, as is often the case, the articles of partnership expressly and merely state that on a dissolution the provisions of Section 44 shall apply, the correct interpretation of that section and the true meaning of the decision in *Garner v. Murray* are of the greatest importance to us as accountants, whether in the capacity of accountant, receiver, or arbitrator.

## University of Birmingham.

### Important Development.

THE University of Birmingham is about to make another departure from the beaten track of custom. It is proposed to bring the Faculties of Commerce and Engineering into closer association. The first public announcement was made on the 27th ult. at an informal tea given at the University by Professor Ashley and Mr. Kirkaldy, the attendance including the Lord Mayor (Councillor Reynolds), and the Vice-Chancellor (Alderman Beale), in addition to a number of prominent business men of the city. Professor Ashley stated that the department of engineering, recognising the desirability that the engineering experts whom it trained should have some acquaintance with business methods, had decided to require all engineering students in their last year to take a simple course of accounting under Professor Dicksee. He believed he was right in saying that that was the first time any engineering school had made accounting a part of its course. It seemed to him that was an innovation appropriate to a University which was bold enough to make its own precedents. At the same time the Faculty of Commerce felt the desirability that such of their students as looked forward to taking part in the commercial management of a manufacturing business should have an adequate opportunity during their university course to acquaint themselves to a sufficient extent with those branches of pure or applied science which were likely to be of service. With the assistance of their colleagues in the great technological departments they were making arrangements to that end. Thus from two sides at once they were feeling their way towards a union of commercial thinking and scientific knowledge, and they hoped that their friends in business would give them encouragement and support.

### Personal.

MESSRS. P. W. ARDRAN & Co., Chartered Accountants, announce that they have removed to Central Buildings, 41 North John Street, Liverpool.

MESSRS. BROWN & WILBY, Chartered Accountants, have removed to 9 Friar Lane, Leicester.

The firm of Kelly & Brown, C.A., 150 Hope Street, Glasgow, of which Mr. Thomas Kelly and Mr. A. Herbert Brown were the sole partners, was dissolved on 28th February 1906 of mutual consent. Mr. Thomas Kelly, C.A., will continue business at 150 Hope Street, Glasgow, and Mr. A. Herbert Brown, C.A., at 180 Hope Street, Glasgow.

MESSRS. J. H. HUGILL & Co., Chartered Accountants, of 117 Leadenhall Street, E.C., announce that Mr. H. B. HUGILL, A.C.A., has been admitted into partnership. The style of the firm will remain unchanged.

MESSRS CHAS. W. ROOKE & Co., Chartered Accountants, of 46 Queen Victoria Street, London, and Central House, Birmingham, have admitted Mr. JOHN SKINNER, A.C.A., into partnership as from April 2nd 1906. The name of the firm remains unchanged.

MESSRS. EVERETT, WHIBLEY & MORGAN, Accountants and Valuers, of 44 King William Street, E.C., have admitted into partnership Mr. N. D. GRUNDY, A.C.A. The style of the firm will be EVERETT, MORGAN & GRUNDY.

MESSRS. NAIRNE & SON, Chartered Accountants, of 64 Bridge Street, Deansgate, Manchester, announce that they have taken into partnership Mr. F. T. GREEN, A.C.A., who has been with them for some years. The firm will continue to practise under the same name as hitherto.

MISS M. HARRIS SMITH, Public Accountant, has removed to St. Stephen's Chambers, Telegraph Street, Moorgate Street, E.C.

MR. C. H. WADE, F.C.A., of 37 Cross Street, Manchester, announces that he has taken into partnership Mr. A. F. P. ALLEN, who has for some time past carried on business at 35 Brown Street. They have further amalgamated their business with that carried on by Messrs. H. HACKETT and A. W. BOSTON for many years under the style of HACKETT BOSTON & Co., at Birmingham, and will continue to practise at the above address, and at Athenaeum Chambers, 71 Temple Row, Birmingham, under the style of WADE, HACKETT, BOSTON & ALLEN.

### Meetings for the ensuing Week.

*Monday*—CHARTERED ACCOUNTANTS' BENEVOLENT ASSOCIATION.—Board of Governors, 3.30 p.m.

*Tuesday*—BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—President's Address. This meeting will be preceded by tea at six o'clock, at 8 Newhall Street.

*Wednesday*—LEICESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Principal and Agent," by Mr. Beaumont Morice, LL.B., at Winchester House, 1 Welford Road; 7 p.m.

LONDON CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "Compositions and Schemes of Arrangement in Bankruptcy," by Mr. A. H. Partridge, A.C.A., at the Hall of the Institute, Moorgate Place; 6 p.m.

SHEFFIELD CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Social evening at the Library, Hoole's Chambers, Bank Street; 6.45 p.m.

LEICESTER SOCIETY OF CHARTERED ACCOUNTANTS.—The Library of the above Society has been removed to 9 Friar Lane, Leicester.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, Mar. 30th, was 179, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 89; Deeds of Arrangement registered, 90. The respective numbers in the corresponding week of last year were: Bankruptcies, 100; Deeds of Arrangement, 96—total, 196; being a decrease of 17. The total number of commercial failures recorded during the 13 weeks of the present year is 2,239; the total number recorded in the corresponding 13 weeks of last year was 2,442, showing a decrease of 203.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, Mar. 30th, was 165. The number in the corresponding week of last year was 196, showing a decrease of 31. The total number filed during the 13 weeks of the present year is 2,054; the total number filed in the corresponding 13 weeks of last year was 2,278, showing a decrease of 224.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, Mar. 30th, amounted to £2,148,046, by way of addition to £3,790,714, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,361,520, showing an increase of £786,526. The total amount registered during the 13 weeks of the present year was £22,260,132 (in addition to the issues in previous years by the same companies), as compared with £22,813,173 for the corresponding 13 weeks in 1905, showing a decrease of £553,041.

ACCOUNTANTS' DINNER.—The clerks of Messrs. Pannell & Co., Chartered Accountants, Basinghall Street, E.C., held their thirteenth annual dinner on Friday the 30th ult., under the presidency of the chief clerk, Mr. Henry George Staff. The principal guests were: Mr. Deputy Pannell, J.P., Mr. W. Hardy King, and Mr. Gilbert C. Clark (members of the firm). Mr. Deputy Pannell, in responding to the toast of "The Firm," expressed the great satisfaction which it gave his partners and himself to be present. Other toasts were "The Visitors," proposed by Mr. E. V. W. Puncker, and responded to by Mr. Deputy Millar Wilkinson; and "The Chairman," given by Mr. W. Hardy King. To the musical programme presented the majority of the clerks contributed.

NATIONAL TELEPHONE COMPANY'S NEW CHAIRMAN.—We are informed that at their meeting on the 29th ult. the board of the National Telephone Company unanimously elected the Vice-President (Alderman G. Franklin, F.C.A., of Sheffield), as President of the company, in the place of Sir H. Fowler, M.P., who had resigned, and also elected Mr. S. H. Sands as Vice-President.

## Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
„ 21st „	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th „	..	..	..	..	..	..	3%
„ 28th „	..	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	..	3½%

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## The Institute of Chartered Accountants in England and Wales.

### EXAMINATIONS.

THE next Examinations will be held on the following dates:—

The Preliminary Examination on the 12th, 13th, and 14th June 1906.

The Intermediate Examination on the 22nd and 23rd May 1906.

The Final Examination on the 29th, 30th, and 31st May 1906.

Persons desiring to present themselves for examination must give notice to the Council at least thirty days before the date of the Examinations, at the same time forwarding the examination fee.

Full particulars and forms may be obtained at the office of the Institute, Moorgate Place, London, E.C., and at the various Branch Libraries.

By order of the Council,

GEORGE COLVILLE,

Secretary.

April 1906.

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### Leading Articles.

#### "How to Criticise Accounts."

THERE is a distinctive air of painstaking and enlightened interest which characterises all the papers delivered by Mr. W. R. HAMILTON, F.C.A., and his most recent contribution to the literature of Students Societies' Transactions, which dealt with the interpretation of accounts, and was read at a recent meeting of the Nottingham Chartered Accountants Students' Society, is certainly no exception to this rule. A full report of this paper appeared in our issue of the 17th ult., and if there be any of our readers who up to the present have refrained from perusing it, upon the supposition that inasmuch as it contains no *pro formâ* examples it cannot be of a very practical character, they may be confidently advised to repair their omission without delay, and they will be amply repaid for their trouble. Indeed, it would be no exaggeration to say that

the paper now before us is one of the most helpful and one of the most noteworthy that have ever been delivered at a Students Society's meeting.

It is not our intention to deal with Mr. HAMILTON's paper point by point, in spite of the fact that the very convenient practice of numbering the paragraphs would render such a treatment of the paper particularly easy. Such a form of review would, however, amount to but little more than a general corroboration of the lecturer's statements, and is therefore quite uncalled for. Suffice it to say that, having first of all drawn attention to the fact that accounts are only of value as an index to transactions that have actually taken place, and of no value whatever *per se*, Mr. HAMILTON proceeds to explain, in a manner sufficiently clear to be comprehensible even to quite junior students, the light that may be thrown upon such transactions by a single Balance Sheet or by a single Trading and Profit and Loss Account. He afterwards shows how that light may be very greatly increased when a series of these documents is available.

When inquiry is being made into the position of a single individual or a firm, assuming that the accounts have been properly and annually prepared, it is clearly only reasonable that they should throw a light upon the position of affairs, and that if intelligently examined the impression to be derived from their inspection should be a true and not a distorted impression. But although the point does not arise in the course of Mr. HAMILTON's paper—and, indeed, could hardly have been dealt with in the time available without sacrificing much that is there and could ill be spared—it is, we think, important to bear in mind, and especially important for the young student to

bear in mind, that the like amount of information cannot in reason be expected from a perusal of published accounts of companies, in that these accounts are designed less to show the true position of affairs than the position which the directors think it desirable to disclose. It is probably no exaggeration to say that few printed accounts of companies disclose the truth, the whole truth, and nothing but the truth. In the case of prosperous companies the financial strength of the position is frequently under-estimated, often by the deliberate and systematic employment of secret reserves, and invariably by the adoption of conservative estimates of the values of outstanding assets and liabilities. On the other hand, with unsuccessful concerns it is not unusual to find the opposite obtaining—that is to say, owing to an inflation of assets or to an insufficient provision for contingencies, the position of affairs disclosed is such as would appear to be more favourable than the actual facts warrant. These remarks, of course, especially apply to published Balance Sheets; as to Trading and Profit and Loss Accounts, it is rare in the extreme that Trading Accounts are published at all, and Profit and Loss Accounts are usually so emasculated as to show nothing clearly except the allocation of the balance of declared divisible profit. Any attempt to draw deductions from the majority of published Profit and Loss Accounts would be doomed to failure at the outset owing to the obvious insufficiency of the material available.

This being the position of affairs—and that it is so cannot, we think, be seriously contested—it may well be asked, What, then, is the object of a company publishing accounts at all? and for our own part we must confess that we have hitherto been unable to find an altogether

satisfactory and convincing answer to this eminently reasonable question. The accounts of a company are presumably published by way of corroboration of the directors' report upon the year's working, and are intended to provide those shareholders who attend the annual general meeting with such evidence as to the facts as may be necessary to enable them to determine whether or not to adopt the directors' report and to sanction the proposed dividends recommended by the board. If the proposition be conceded that the directors have a discretion to make whatever Reserves they may think desirable before arriving at a figure of profit available for distribution, and if it be further conceded that in the interests of the company it is undesirable that the exact amount of such reserves should be stated, then a reasonable justification may be found for the existence of Balance Sheets and accounts which deliberately understate the financial strength of the undertaking, and the published accounts may be regarded as evidence that the position of affairs is at least as strong as it *prima facie* appears to be. But it is not equally easy to justify the existence of accounts which are deliberately made unduly favourable—in which investments are stated at cost irrespective of their current value, wasting assets at figures which do not adequately provide for depreciation, and book debts at a total which cannot be fairly said to have been arrived at after making a sufficient reserve to cover all loss likely to be experienced by bad and doubtful debts and discounts. Yet it is a mere truism to state that Balance Sheets are frequently issued upon these lines, and without sufficient explanation to enable any one to determine what reserves would have to be made in order to reduce the stated figure of

profit (which, for present purposes, may be taken to be legally divisible) to a figure of true net profit, which might be divided and yet leave assets in hand of a sufficient value to pay the whole of the debts of the undertaking and to return to its shareholders their capital in full. In connection with such undertakings—and, after all, they represent a very large proportion of existing companies—it is indeed difficult to see what useful object is gained by the publication of accounts at all. The point is one which has, of course, from time to time been very fully and widely discussed, but we do not think that it has as yet been by any means exhausted. If the result of a perusal of Mr. HAMILTON'S paper is to again turn attention to the fact that accounts are of no value *per se*, but merely of value as an index to transactions that have actually taken place—*i.e.*, to events that have happened or are in the process of happening—it is, we think, by no means impossible that a fresh zest may be given to the discussion of this important subject, and that it may conceivably be dealt with in the future upon more practical, and therefore more profitable, lines than in the past.

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#### Bankruptcy Law Amendment.

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WE have been given to understand, through a source usually well-informed, that there is at present an inquiry on foot into the working of the existing Bankruptcy Acts, which may be expected to lead in the near future to a report by the Board of Trade with a view to further legislation.

Inasmuch as it is sixteen years since the last Bankruptcy Act was passed, this statement would not of itself be regarded as surprising, although, perhaps, many of our readers may

wonder why such an inquiry should be conducted in secret instead of upon the customary lines, through the medium of either a Parliamentary or Departmental Committee. There are still many defects in the existing bankruptcy law which await a remedy, and perhaps foremost among these is the entirely unsatisfactory position of affairs as regards undischarged bankrupts and the liabilities subsequently incurred by them. Legislation with a view to removing the abuses encouraged rather than checked by the Deeds of Arrangement Act, 1887, still remains to be formulated, although its need has been officially appreciated for some little time past, and has been well known by accountants ever since the date when the Act came into operation. But although there is thus legitimate scope for an inquiry into the matter, the mystery of the secrecy with which that inquiry is being conducted still remains to be explained, and upon this point our informant has something to say of the greatest interest to the whole profession.

Put shortly, his statement is that this very "Departmental" Committee has virtually decided to recommend the introduction of a Bill abolishing professional trusteeships altogether, and leaving the whole administration of insolvent estates in the hands of Official Receivers. Some may think that it is unnecessary to seriously concern ourselves with such a report until the facts of the case become publicly known; but, for our own part, we hardly share this view. Such a recommendation at the hands of a Government Department is, it seems to us, exactly the sort of thing that the present Parliament would delight in enacting, and there being thus a very real danger that a very lucrative branch of professional accountancy may

thus be monopolised by Government officials, we think it desirable that the earliest possible intimation of the position should be made public, so that all concerned may organise their defences accordingly.

In the first instance we would point out that there has been no proper and disinterested inquiry into the matter, for not only has the profession been kept entirely in the dark as to what is going on, but, further, the business world has not been consulted. How much business men value official trusteeships is conclusively shown by the fact that they never continue an Official Receiver as trustee if they can possibly help it in cases where there are any assets worth talking about, or any inquiries necessary as to the existence of undisclosed assets. It took the commercial man a very short time to discover the shortcomings of official administration in bankruptcy; with the result that almost from the first the work of the Official Receiver's Department was confined to the protection of estates between the date of the receiving order and the date of the first meeting of creditors, and to the winding-up of such bankruptcy estates as were too poor to be worth wasting further time upon. Had business men been consulted, it is thus abundantly clear that they would never have recommended so retrograde a step as the establishment under the auspices of a Government Department of a monopoly in the administration of insolvent estates, and, unless we greatly mistake, they will lose no time in protesting against so outrageous a proposal as soon as the trend of official opinion be made public.

Whether, however, the views and needs of the commercial community will be more considered by the Board of Trade and Parliament now than upon previous occasions is, perhaps, a somewhat open question. There

can be little doubt that the proposal to which we have drawn attention has not been raised through any genuine desire to improve the existing machinery and to fit it more accurately to the needs of the commercial world, but rather as a means of obviating the very serious, and indeed distressing, difficulty that has been caused of recent years through a most lamentable lack of work in Official Receivers' departments. The elaborate staff of officials which was got together in 1883, and has since been increased whenever opportunity offered, has now and for some little time past been in the position that it cannot find half enough work to do, and apparently foresees even less probability of a sufficiency of that commodity in the near future. Hence at the present time, when economy in the public service has been so recently and frequently used as an electioneering cry, the danger is by no means remote that a serious, and indeed wholesale, reduction of the official staff will be necessary unless by some means or other additional employment can be found. What simpler means of finding employment for Government officials could there be than by passing a law requiring all persons to employ them, and enacting that they be no longer entitled to employ professional men merely upon the ground that they believe their interests will be more efficiently looked after by the latter? This, of course, is by no means the only objection to officialism *per se*, but it is undoubtedly one of the most serious. In this country officialism will never be sufficiently popular to pay its way if it is put upon equal terms with individual effort. But if, having once been established, and having been found to be not required, the places found for friends of "the powers that be" are to be made permanent by

the establishment of a Government monopoly in that particular line, there will naturally be no difficulty in continuing to indefinitely find lucrative Government employment for the friends of the leaders of the political party in power for the time being.

Under these circumstances we would direct special attention to the course being pursued in connection with the Public Trustee Bill now before Parliament. Under this Bill a number of new posts will be created providing further patronage for the Government. For the moment the employment of these officials is to be optional, and, so long as it remains optional, the taxpayer—who will have to find the salaries of these officials—is the only one who need object. But after a time the impossibility of continuing to pay salaries on sinecures must become too obvious to be continued, and then we shall again see the effort made to extend the arm of officialism and to gradually establish the employment of a Government Trustee as compulsory in all cases. The question is thus not one which affects accountants alone—it affects in a far larger measure the whole of the legal profession, for the employment of official solicitors to transact official business can in the nature of things be only a question of time. It further affects—perhaps most of all—the general public, who, unless they bestir themselves in time, will find themselves at the mercy of officials entirely indifferent to their interests and without the possibility of securing adequate professional advice, because, owing to the establishment of a monopoly, no such advice and services can be rendered by professional men.

Since the above was written it has been announced that the Board of Trade has



appointed a Departmental Committee to inquire into the working of the Bankruptcy Acts, which Committee includes Mr. W. B. PEAT, F.C.A. (the Vice-President of the Institute), and also representatives of the Law Society, the Chambers of Commerce, and the Trade Protection Societies. *Primâ facie* it might seem as though our informant, having slightly earlier information than most of the contemplated appointment of this Committee, had mistaken its constitution and condemned it in advance. We think, however, that there can be little doubt that the constitution of the Departmental Committee now announced was preceded by some such official and confidential inquiry as has been foreshadowed above, which may be taken to indicate the policy which the Bankruptcy Department of the Board of Trade hopes to be able to persuade the Departmental Committee to adopt. That either business men or professional men would be so fatuous as to fall in with such an idea is, however, in the highest degree improbable, and for that reason it is distinctly reassuring that a Departmental Committee should have been appointed; for in the nature of things it would hardly have been practicable for the Board of Trade to first of all appoint a Departmental Committee to inquire, and then almost immediately afterwards initiate legislation upon entirely different lines.

### Weekly Notes.

**The British Law  
Fire Insurance  
Company, Lim.**

At the ordinary general meeting of the British Law Fire Insurance Company, Lim., held on the 9th ult., the directors' report and accounts for the year ended 31st December 1905 were submitted and approved. The net premium income was £83,208, as against £79,525 in 1904, and the

loss ratio was kept down to the very satisfactory figure of 29.1 per cent. The accounts show an available balance of £29,826, of which £10,000 was transferred to reserve, increasing that account to £88,000. £9,826 was carried forward, against £7,056 in the previous year, and the remainder devoted to a dividend of 8 per cent., and a bonus of 2 per cent., both free of income tax. Whether it is altogether desirable to make a distribution of 10 per cent. while the reserve barely amounts to a year's net premium income is perhaps a somewhat open question, which is certainly not simplified by the consideration that the investments are stated in the Balance Sheet at cost price.

#### Undischarged Bankrupts.

When the Bankruptcy Act of 1883 was first introduced it was pointed out as being one of the merits of that measure that it was not altogether an easy thing for a bankrupt to obtain his discharge, and it was confidently predicted that the effect of this would be to materially reduce the number of bankruptcies. That neither bankruptcies nor insolvencies have been reduced as a result of legislation is, we think, by this time fairly generally admitted, but a point that appears to have been somewhat overlooked is that in the meanwhile these provisions of the Act have by no means remained in abeyance, and that as a result there is a steadily increasing percentage of the business population of this country who are undischarged bankrupts. Since the 1883 Act came into force there had been 89,583 adjudications down to the date of the last annual report, whereas only 19,136 bankrupts had applied for their discharge. Of course, many of these applications were refused, and still more granted only subject to suspension; but, leaving these comparatively minor points upon one side, the fact remains that there are in our midst at the present time upwards of 70,000 undischarged bankrupts, and that the numbers are being added to at the rate of at least 3,000 per annum. From the point of view of the creditors this is, of course, not a matter for consternation, in that it means that any after-acquired property may be attached for their benefit, although the likelihood of Official Receivers developing sufficient energy to so attach it is somewhat remote. But from the point of view of the business community generally the position is most serious, in that, in the event of these bankrupts failing a second time, any property that they may then be possessed of goes not to the creditors in their second failure, but to

the creditors in the first bankruptcy. This is manifestly unfair to the second creditors, but, apart from that, what it practically amounts to is that the creditors in the second bankruptcy, having no interest in recovering assets, are not likely to greatly bestir themselves to see that such assets are recovered. Indeed it is, we believe, now very generally admitted that a man who fails for a second time has a far easier time of it in every way than upon the occasion of his first failure. It is true that with each successive failure it becomes increasingly difficult for him to obtain an unconditional discharge, but, as matters stand, his position is improved rather than otherwise by this disability.

**The Effect of the  
Removal of a  
Receiver  
in Chancery.**

The more one considers the recent decision of Mr. Justice Warrington in *The British Power Traction Co.* the more evident does it become that an accountant should only accept the position of Receiver in Chancery in succession to a prior receiver after making the most careful inquiries into the acts of his predecessor. The effect of this decision seems to be—and, indeed, it could hardly have been otherwise—that all liabilities properly incurred by the first receiver must be first met out of the assets realised by his successor before even the latter's liabilities are paid out of the trust estate. So long as the second receiver was in a position to regard the amount that the first receiver was authorised to borrow as the maximum amount for which he had authority to pledge the assets of the estate, his position was at least straightforward. But now that it has been held that there is not necessarily any such limitation, it may quite conceivably happen that the accountant who accepts the post of receiver on the removal of a prior receiver may eventually discover, after having pledged his personal credit in a considerable sum, that the whole of the assets recoverable have been hypothecated to meet the liabilities incurred by his predecessor. It may be true that, from the point of view of creditors supplying goods to Receivers in Chancery, no other solution of the question is practicable, but that of itself affords little consolation to the receiver, who, having had no adequate opportunities of inquiry prior to taking up his duties, eventually finds that the sole result of his trouble is that he is considerably out of pocket in consequence. It seems to us that this entirely inequitable state of affairs might be readily avoided by the enactment of a rule that,

upon the removal of a receiver, a notice should be gazetted calling upon all persons having a claim upon the receivership assets to lodge particulars thereof with the solicitors having the conduct of the action within seven days from the date of such advertisement. The new receiver might then, at least, have an opportunity of ascertaining the extent to which the assets had been mortgaged before himself incurring any very heavy responsibilities. In making the above suggestion we are, of course, not unmindful of the fact that Mr. Justice Warrington's decision was that the liabilities of the first receiver in excess of the amount which he was authorised to borrow were not to be admitted without inquiry, but that, of itself, hardly disposes of our objection. Our point is that the inquiry ought in reason to be held before the second receiver has been called upon to heavily commit himself, and for that there is at present no effective machinery.

**Liability  
for Witnesses'  
Expenses.**

It is, of course, generally known that a solicitor serving a witness with a subpoena does not thereby become personally liable to pay to him whatever sum may be found to be properly due to him as his expenses in the matter, the position occupied by such solicitor being that of an agent acting on behalf of a disclosed principal, upon whose shoulders, therefore, the liability rests. It thus follows that while a subpoena must in all cases be obeyed if the witness is desirous of avoiding somewhat unpleasant consequences, his chances of securing remuneration depend entirely upon the solvency of one of the parties to the litigation, to whom, were he a free agent, he might be by no means disposed to grant credit. To meet this obviously inequitable state of affairs the law permits a witness, before he has been sworn, to refuse to give evidence until he has been paid what he is entitled to; which approximately meets the justice of the case so far as witnesses as to fact are concerned. It, however, hardly compensates the expert witness, who may be compelled to waste much valuable time waiting about in Court only to find that eventually he is not called, or else that his evidence is dispensed with because the side which has called him is unwilling to pay his fees. The position in such cases is eminently undesirable, and, that being so, it is satisfactory to observe that, at all events under some circumstances, and under conditions which frequently obtain in the most inequitable cases, the witness may be able to fasten personal liability on the

solicitor by whom he has been served. Such a case was argued in the Wandsworth County Court a short time since, when it was held that a solicitor who had agreed not to charge his client any costs in the event of the action being unsuccessful, had thereby taken the conduct of the action into his own hands and had become liable as a principal. This decision, if generally adopted, will probably to a large extent meet the requirements of the case, in that, where the client is impecunious, some such arrangement as to costs may be reasonably assumed as between solicitor and client, even although it may be somewhat difficult to prove. But for our own part we see no particular reason why witnesses should be placed in a worse position than, say, law stationers or shorthand writers with regard to their charges. A revision of the existing rule would inflict no hardship on members of the legal profession, but it would simply mean that they would insist upon payment in advance in respect of all items in respect of which they were personally liable. Possibly such a rule might constitute a hardship in the case of impecunious litigants so far as witnesses as to fact are concerned, but there can be no possible excuse for anyone seeking to secure expert evidence who is not in a position to pay for the professional services rendered, and certainly they ought not to be in a position to compel such services without payment.

**Curious Effect  
of the Statute of  
Limitations.**

At the Holbeach County Court a short time since an action was heard, brought by the Chapter of Ely against the Member of Parliament for South-West Norfolk for non-payment of tithe on land in South Lincolnshire. The defence was that no demand for payment having been made for twenty-seven years the claim was barred by the Statute of Limitations, and on behalf of the plaintiffs it was admitted that the claim had been in abeyance for this period of time, the tithes having been in the meanwhile collected from another person in error. His Honour held that the Statute of Limitations applied, and that henceforward the tithes were irrecoverable. Instances must, of course, be rare in which for a period of twenty-seven years anyone will continue to make a payment in respect of which no liability exists, but the case is of interest to auditors as showing that even although the whole of the receivable income from an estate may be duly collected from year to year, the position is not necessarily satisfactory unless it can be shown in addition that it has been

received from the right persons. It occurs to us that a novel form of fraud by collusion might grow up out of this decision, under which the party liable might induce someone to pay what he himself owes, under a presumed misapprehension as to his rights, until such time as the claim became statute-barred, after which the first party would be free from all subsequent claims, while presumably the party making the payment would have a right of recovery, subject, of course, to the provisions of the statute.

**London's  
Contribution to  
the Income Tax.**

According to a recent return, profits derived from public companies, interest, &c., in London during 1904-5 were assessed for income-tax purposes at £143,534,555; incomes derived from trades and professions during the same period were assessed at £74,806,453; while income derived from houses and land was assessed under Schedule "A" at £45,264,076. Corporate bodies paid in salaries during the year no less than £23,640,039, against £21,303,534 salaries paid in the Army and Navy. The assessments under Schedule "B" as profits derived from nurseries and market-gardens were put down at £6,903. There were 482,235 houses assessed for Inhabited House Duty, the amount of which aggregated £29,665,810, upwards of three-fourths of which was in respect of ordinary dwelling-houses.

**A Study in  
Depreciation.**

According to a monthly contemporary an application was recently addressed to the War Office by an officer for directions as to the amount to be charged to a man who had lost his overcoat. The reply, our contemporary states, was as follows:—

"The calculation of the value of a lost great-coat should be made by deducting the value when worn out from the value when new, as given in Article 75 of 1865 Clothing Warrant, dividing the remainder by the number of months the garment should wear, multiplying the quotient by the number of months the garment has actually been worn, and subtracting the sum thus obtained from the total value of the new great-coat. The balance is the amount that should be charged."

We now understand why it is that the War Office lays such stress upon mathematical knowledge upon the part of candidates for a commission in the army. It would be interesting, however, to go a step further, and inquire

how many accountant students can make a calculation of this kind in their heads, and also as to how many would make it upon the lines laid down by the War Office.

**War Office  
Methods.—  
Mahomet and the  
Mountain.**

Another instance of War Office methods may not be out of place, more especially bearing in mind the fact that the Stores Inquiry in connection with the late War is not yet concluded. It appears that in the course of the War the Government bought sixty-four horses at Preston for service use. Instructions were given to the inspecting officer to examine these animals, but as he happened at the time to be at Carlisle, instead of directing him to proceed to Preston, the horses were forwarded to him at Carlisle, for inspection, by train, the cost of transit amounting to upwards of £100. While such wholly preventable wastes are possible at head-quarters, it would seem to be almost superfluous to inquire as to whether anyone is to blame for similar preventable wastes which took place six or seven thousand miles away.

**Hope for the  
Shareholder.**

The tired investor, weary of watching the continued fall of the financial barometer and despairing the scantiness of dividends, might do worse than emulate the example recently set by two of his kind. One worthy, with an eye on the main chance—which is usually considered the perquisite of the children of Israel—sold the stamp off his proxy envelope and bought a bun, while the other went one better by removing the adhesive stamp on the proxy itself, in addition to that on the envelope enclosed for its safe return. In each case the directors and not the company suffered, but we suppose the working code is, if you cannot catch your company there are always the directors!

**What Labour  
would do for the  
Taxpayer.**

The current issue of that very useful and interesting magazine *The Financial Review of Reviews* contains a very striking article by Mr. Keir Hardie, M.P., entitled "A Labour Budget." There is some straightforward language, and little juggling. The Labour Party are bent on reforms (we may not discuss the "reforms," since they are within the Index Expurgatorius of politics), and

this is how they propose to find the means wherewith to carry out their plans. First, we almost said "of course," the income-tax payer would have a graduated and differentiated scale on the following lines:—

Income in thousands of pounds	Present Income-tax	Proposed	
		Taxes levied at the source	Additional Taxes levied direct
1—2	..	..	..
2—3	..	..	..
3—4	..	..	..
4—5	..	..	..
5—6	..	..	3%
6—8	..	..	12
8—10	..	..	2
10—12	..	..	2½
12—16	..	..	3½
16—20	..	..	4½
20—24	..	..	5
24—28	..	..	5½
28—32	..	..	6
32—36	..	..	6½
36—40	..	..	7
40—50	..	..	7½
50—60	..	..	8
60—70	..	..	8½
70—80	..	..	9
80—90	..	..	9½
and so on up to 800	One shilling in the £ on all incomes collected at the source.	One shilling in the £ on earned incomes; 1s. 6d. in the £ on incomes derived from property.	and so on up to 45½ %

Then we come to the Estate Duties in case of death. Dives is to pay toll to Lazarus in the following summary fashion:—

Value of Estate in thousands of pounds	Present Estate Duty per cent.	Proposed Estate Duty per cent.
25—50	4	4
50—75	5	5
75—100	5½	6
100—125	6	7
125—150	6	8
150—200	6½	9
200—250	6½	9½
250—300	7	10
300—400	7	11
400—500	7	12
500—600	7½	12½
600—700	7½	13
700—800	7½	13½
800—900	7½	14
900—1,000	7½	14½
1,000—1,250	..	15
1,250—1,500	..	15½
1,500—1,750	..	16
1,750—2,000	..	16½
2,000—2,250	..	17
and so on up to 20,000	8 per cent. on all Estates over a million.	and so on up to 53

Our readers should turn to the article itself for full particulars of the interesting Budget given by Mr. Keir Hardie. It will well repay perusal, if only by way of admonition.

**A Definition of "Citizenship."** *The Financial News*, in a happy vein of irony, says that a Radical member of the London County Council has aptly defined citizenship as "the right to pay rates." by Google

**German Stock  
Exchange and  
Promoters'  
Profits.**

It has recently been pointed out that the German Stock Exchange Committees possess and exercise the power to exclude from quotation in the Official List any new concern in which the promoters' and vendors' profits are so large as to cause the public to pay an excessive price for the assets taken over by the company seeking public share subscriptions. No such safeguard—for up to a point it is a safeguard—exists either here or in New York, and the subject may advantageously bear ventilation. Each case seems to be considered on its merits, and in a recent instance (a building site company) the refusal to admit quotation seems to have been made on account of the fact that colossal profits were to have been made by the issue itself, and presumably the decision of the Committee might have been otherwise if a real increase in value had been derived from the protracted possession of land involving the risk of possible changes of circumstance and the payment of interest for many years. We gather, however, that where there is no concealment about the profit made by the promoter the public are left to their own resources and to their knowledge of the maxim *caveat emptor*. The *Frankfurter Zeitung* has the following happy remarks to make:—

"The public should not cherish any confidence, on the score of the happy termination of this single case, that none of the stock issues which have been admitted to quotation conceal no menace of an 'overreaching' of the public. . . . The means of forming a judgment which are at the disposal of the Committee are only occasionally sufficient, because it is only seldom that the overreaching appears so clearly in the light of day, and because an outspoken judgment as to its presence or absence cannot always be pronounced straight away. It is for this reason that the Stock Exchange regulation lays such special stress upon the public being supplied with all the necessary data for forming a judgment as to the value of the paper to be introduced upon the Bourse. Henceforward, as heretofore, the public's own investigations must be its best defence against losing money over new share issues. . . . Still, the mere prospect of a searching examination by the Admission Committee will scare off many a promoter and contribute to the greater solidity of company promoting in general."

**The Transfer Tax in Wall Street.** Commercial New York is reported to be considerably disconcerted by a decision of the Attorney-General that a tax of two dollars must be paid on each 100 shares on stock transferred regardless of the par or market value. The regulation will doubtless be a hardship in many

hundreds of cases, but an American contemporary facetiously says that Wall Street can easily overcome this difficulty by insisting that all shares shall have a par value of 100 dollars! The attitude of the Legislature appears to be somewhat severe as regards the Street and its business, and the suggestion that every broker shall deposit \$100,000, or equivalent security, before commencing operations may not be quite such a foolish proposition as it seems.

**Tools of Trade.**

In the City of London Court last week Deputy-Judge Horton Smith is reported to have decided that a typewriting machine used by an advertising agent was a "tool of trade," and therefore exempt from distress. It was mentioned that lawyers' books were also privileged as tools of trade. How far may this analogy be carried as regards accountants, we wonder?

**The Railway  
Moloch.**

The year's return of railway fatalities shows some very interesting figures:—  
Persons killed during 1905, 1,100, being an increase of 27 over 1904. Of these 148 were passengers, as against 115 in the previous year.  
Total number of passengers injured (2,368) shows a decline of 301.  
Number of railway servants killed, 399; decrease of 17.  
Number of railway servants injured, 3,802; decrease of 119.  
More than one-third of the total deaths took place, as usual, among trespassers on the line (including suicides).  
Considering the many millions of passengers carried, and the 600,000 railway servants employed in the industry, the percentages of injury are very small indeed.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

**Indian Companies' Balance Sheets: Charges on Assets.**

(To the Editor of *The Accountant*.)

SIR,—The Indian Companies Act of 1882, Section 74, makes the Table "A" form of Balance Sheet compulsory for all Indian companies. The form shows separately "the amount of loans on mortgages or debenture bonds."

Many concerns are financed by banks upon a letter of hypothecation giving a lien over the stocks of the concern. The auditors have insisted upon such loans or advances being shown as secured upon stocks.

By the auditors it is contended that, since a "Register of Mortgages" is required to show "all mortgages and charges specifically affecting property of the company," a similar comprehension is intended in the Balance Sheet; in other words, that, although not strictly mortgages, such hypothecations are mortgages within the meaning of the Act. Moreover that, apart from the prescribed form, a Balance Sheet which fails to disclose that such creditors are secured does not exhibit a true and correct view of the company's affairs. And that, since Section 74 provides for registration of Balance Sheets and Section 220 (e) provides that "every person may inspect the documents kept by the Registrar," a Balance Sheet is open to, and is for the protection of, the public as well as shareholders.

By certain companies it is contended, on the other hand, that such liens are not mortgages within the meaning of the Act. That, since Section 74 and the following sections are grouped as "provisions for the protection of members," the Balance Sheet is devised for the protection of members not creditors, and is not open to the inspection of creditors as is the Register of Mortgages, and that the Register of Mortgages is a sufficient disclosure to creditors of any such liens. That the publication of such information is injurious to the company's credit. That the auditors' duty, as regards such liens, is confined to satisfying themselves of their due entry in the Mortgage Register, and that failing such entry they, the auditors, would be liable as officers of the company.

I shall be greatly obliged if you will kindly give me your opinion as fully as possible, and also inform me (1) whether such debts should be shown as secured; (2) whether the particular property charged should be stated—e.g., advances against stocks, book debts, &c.; (3) whether it is the custom in England, where the prescribed form of Balance Sheet only forms part of Table "A," and is, therefore, capable of exclusion, to distinguish between secured and unsecured creditors, or between assets that are unquestionably the company's property and assets over which a mortgage, charge, or lien has been created.

Yours faithfully,

DECIMALS.

[We will deal with this point in an early issue.—  
ED. ACCT.]

### Legislation for the Profession.

(To the Editor of The Accountant.)

SIR,—The following extract from a Transvaal correspondent's letter may be of interest to those of your readers who are anxious to see the profession of accountancy in this country placed on a firm and secure basis by Act of Parliament. He says, "I am a member of the Transvaal Society of Accountants, which was formed in 1904, and we style ourselves Registered Public Accountants. We are incorporated by Ordinance, and have just as good a professional standing as solicitors. Nobody can now practise as a Public Accountant unless he is a member of the Society. Entrance is now only possible after a stiff examination and three years' articles with a practising P.A. No other persons can sign as auditors, and, altogether, matters have been put on a sound basis. C.A.'s of England and Scotland are, of course, admitted without any further trouble, provided they are fixed residents in the Transvaal."

Yours faithfully,

April 7th 1906.

W. H. EARL.

### The Audit System of the Local Government Board.—Local Authorities' Cash Balances (at 31st March 1906) and Banking Reserves.

(To the Editor of The Accountant.)

SIR,—The annexed questions, which were put at my request by the Hon. Claude G. Hay, M.P. for the Hoxton Division of the parliamentary borough of Shoreditch, and the answers of the Right Hon. John Burns, will enable everyone to gauge the work of the auditors appointed by the Local Government Board, and the inability of the auditors to count and certify the cash balances belonging to the respective municipal, education, and poor law authorities throughout the country, upon the dates fixed by law for the making up of their several accounts, to say nothing of the very important duty of adequately testing and checking the cash transactions of local authorities from day to day.

It must, however, be mentioned that there are two or three authorities in the Metropolis (peculiar to themselves) who get, by reason of their size and the huge volume of their subsidiary Revenue Accounts, exceptional treatment in the latter respect.

The returns—when obtained—as to the (1) number of local authorities whose accounts are subject and not subject to district audit, with the (2) cash balances (at

31st March 1906) of public bodies, in their relationship to the banking reserves of the great London and provincial banks, will, I hope, afford much valuable information to owners, ratepayers, users, and consumers alike.

I am, Sir, your obedient servant,

E. A. R. ADAMS.

Shoreditch Town Hall, E.C., 6th April 1906.

HOUSE OF COMMONS, 5th April 1906, Thursday.

*Question No. 48 (Mr. Claude G. Hay).*—To ask the President of the Local Government Board if he has made, or will make, arrangements for the district auditors throughout England and Wales to count and certify the net cash balances in the hands of all treasurers and accounting officials whose accounts are subject to the District Auditors Act, 1879, and its applied provisions, on the 31st March in each year, or upon such other date, if any, as the accounts are made up to and balanced.

*Answer (Mr. John Burns).*—I am afraid that it would not be practicable to give effect to the arrangement suggested.

*Question No. 49 (Mr. Claude G. Hay).*—To ask the President of the Local Government Board if he will state the number of district auditors employed under the Board, and the number of districts assigned to each district auditor, distinguishing between the areas of the administrative County of London and the rest of England and Wales.

*Question No. 50 (Mr. Claude G. Hay).*—To ask the President of the Local Government Board if he will furnish the names of the municipal corporations, complete accounts of which are subject to audit by auditors appointed by the Local Government Board, the number of auditors assigned to the work thereof, with the names of their respective audit districts.

*Answers to Questions 49 and 50 (Mr. John Burns).*—Perhaps the hon. member will allow me to answer this and the following question standing in his name together.

The complete staff of district auditors and assistant auditors consists of fifty auditors and twenty assistants.

The names of the municipal corporations, all the accounts of whom are now, or will, at the expiration of the present financial year, be liable to audit by district auditors are: Bournemouth, Cheltenham, Merthyr Tydvil, Plymouth, Poole, Southend-on-Sea, Swindon, and Tunbridge Wells.

The particulars asked for as to the number of local authorities in the districts assigned to the auditors respectively, and as to the arrangements for the audit of the accounts of the corporations above-mentioned, would be too lengthy to be given in reply to questions, but I shall be happy to send the hon. member a statement on the subject if he desires it.

HOUSE OF COMMONS, 6th April 1906.

*Question (Mr. Claude G. Hay).*—To ask the President of the Local Government Board if he will grant the returns relating to local authorities standing on to-day's notice paper :—

" Local authorities (England and Wales).—Return showing the number of local authorities in England and Wales at the 31st day of March 1905, distinguishing between authorities in the Administrative County of London and the rest of the country in respect of the—

Boards of Overseers of the Poor,  
Boards of Guardians of the Poor,  
County Councils,  
Joint Committees of County Councils,  
The Lancashire Asylums Board,  
Visiting Committees of County Lunatic Asylums,  
Rural District Councils,  
Parish Councils and Parish Meetings,  
Lighting Inspectors and Committees,  
London County Council,  
Corporation of the City of London,  
Visiting Committees of London Lunatic Asylums,  
Metropolitan Police,  
Metropolitan Borough Councils,  
Visiting Committee of the City of London Asylum,  
Managers of the Metropolitan Asylums District,  
Managers of Sick Asylums Districts,  
Other Local Authorities of the Metropolis,  
Burial Boards and Joint Committees acting under the Burial Acts,  
Education Authorities,  
Harbour, Dock, and Pier Authorities,  
Port Sanitary Authorities,  
Commissioners of Sewers, Drainage Boards, &c.,  
Other Joint Boards, Committees, and  
Statutory Authorities,

together with the number of accounts which were subject to audit by the district auditors, in the following form :—

Name of Authority	Situating in the Area of the County of London	Rest of England and Wales	Total Number of Authorities at 31st March 1905	Subject to Authority by District Auditors		Audited Yearly	Audited Half-Yearly
				County of London	Rest of England and Wales		
1	2	3	4	5	6	7	8

Question (Mr. Claude G. Hay), Local Authorities (Balances, &c.).—Return relating to the Cash Balances and

Reserves of Local Authorities in the following form:—

Names of Local Authorities	Number at 31st March 1906	Net Cash Balances in hand at 31st March 1906			Overdrawn Cash Balances (if any) at 31st March 1906			Reserve Funds (of Country Banks) at 31st March 1906			Percentage of Net Cash Balances in hand at 31st March 1906 to Reserve Funds (Col. 5) for Authorities outside the area of the County of London	Reserve Funds (of London Banks, including the Bank of England) at 31st March 1906	Percentage of Net Cash Balances in hand at 31st March 1906 to Reserve Funds (Col. 7) for Authorities in the County of London	Totals at 31st March 1906										
		Of Net Cash Balances in hand			Of Overdrawn Cash Balances (if any)			Of Reserve Funds						£ s d			£ s d			£ s d				
1	2	3			4			5			6	7			8	9			10			11		
	No.	£	s	d	£	s	d	£	s	d	Per cent.	£	s	d	Per cent.	£	s	d	£	s	d	£	s	d
Totals ..																								

Stating the Reserve Funds of the several banking institutions at the 31st day of March 1906, or at the nearest date to the 31st day of March when their several accounts were made up to.

Answer (Mr. John Burns) [not answered orally].—I am not able at present to answer this question. The notice for the returns only appeared on the notice paper this morning, and the matter is one which needs consideration.

#### Income Tax—Undervaluation of Stock.

(To the Editor of The Accountant.)

SIR,—I am indeed glad to see your editorial note against the letter of "Imperial," which appears in your issue of the 7th inst. The creation of a Secret Reserve by undervaluing stock is—to put it shortly—fraud, and an objectionable means of shifting the burden from the shoulders which should bear it to those of more honourable taxpayers.

Of course, it is clear from the letter of "Imperial" that his only reason for writing you was to show up an objectionable practice, which, it is hoped, has not been at all generally adopted.

Yours faithfully,

T. HALLETT FRY.

Temple, E.C., 9th April 1906.

[On the contrary, the practice is by no means unusual.—Ed. Acct.]

#### A Designation for the Profession.

(To the Editor of The Accountant.)

SIR,—I have read Mr. Chas. R. Whitnall's letter in *The Accountant* of the 7th inst.

He states that it is extremely unlikely that the Institute could obtain for its members the exclusive right to call themselves by any new name, but lower down he

suggests a word which might be appropriate; which makes it rather difficult to follow him.

Whilst agreeing with you that this is not the time to suggest a specific term, it would interest me to know why it should be extremely difficult for members of the Institute to obtain such exclusive rights. Let other Societies adopt what titles they like, but my contention is that such a title for members of the Institute would be an assistance to the public in protecting themselves, consequently, why should there be great difficulties in the way?

I do not see Mr. Chas. R. Whitnall's name in the list of members of the Institute.

Yours faithfully,

A.

9th April 1906.

#### Current Law.

*Under this heading are noted from time to time the salient features of decisions of interest which, so far, have not appeared in our "Law Reports." As, however, these notes are necessarily greatly condensed, reference should in all cases be made to the fuller report when it appears.)*

#### BANKRUPTCIES AND INSOLVENCIES.

*In re Dalmeyer; ex parte Dalmeyer.*

C.A.

On appeal by bankrupt from order of Giffard, R., granting his discharge subject to his setting aside £500 a year out of his earnings for his own support, and paying the surplus (if any) to the trustee until the creditors should have received 10s. in the £, held that, in view of the facts that the bankrupt's assets were not equal to 10s. in the £, that he had contributed to his insolvency by his unjustifiable extravagance in living,



and had made an arrangement with his creditors on a previous occasion, the Court had no jurisdiction to make such an order. Order varied accordingly by suspending bankrupt's discharge for two years, the other conditions remaining the same.—(*Times*, Apr. 7).

## The Leicester Chartered Accountants Students' Society.

### Sureties.

By Dr. LINDLEY.

LECTURE delivered to members of the above Society on March 26th.

### Guarantees.

First it is necessary to distinguish certain legal terms that at times are used in a somewhat indiscriminate manner—viz., "warranties," "guarantees," and "indemnities." The first term relates entirely to things—e.g., warranties of title, quality, &c. (for which see the Sale of Goods Act, 1893); whereas the other two relate to persons. The difference, as will presently be seen, is one entirely of form—for all guarantees are in one sense indemnities, as being undertakings to hold a person free from loss or damage. The only statute having any bearing upon the subject is the Statute of Frauds (29 Car. II, c. 3, sec. 4), which enacts: "No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." The section does not make the agreement void, but merely unenforceable at law. It includes promises to secure debts, or the fidelity of a person, or to secure a person from harm in respect of wrongful acts (torts) which create a liability for damages. The promise may apply to future liabilities as well as liabilities already incurred.

*Note.*—A promise to give an undertaking is as much within the statute as the giving of the undertaking itself (*Mallet v. Bateman*, L.R. 1, C.P. 163).

### Memorandum or Note.

The formalities in respect of the memorandum are the same as are required to comply with the statute generally. Shortly they are these:—

- (1) The memorandum must be in existence *before* action brought.

- (2) It need not be contained in a single document, but, if otherwise, it must be clear that the various papers relate to one another.

- (3) It must indicate the parties and show the agreement of the party to the terms charged (*Holmes v. Mitchell*, 7 C.B., N.S., 34); and

- (4) It must be signed by the party charged or his agent.

The signature may be in any form so long as the same is recognised by or brought home to the party as having been done by his authority. The agent need not have been appointed in writing.

*Note.*—Though parol evidence cannot be given *on behalf* of a person who has signed an instrument as principal, to prove that he is in fact an agent, yet it is admissible on behalf of a plaintiff suing an undisclosed principal, in order to charge the latter (*Wilson v. Hart*, 7 Taunt. 295; also 2 Sm. L.C.).

*Consideration.*—All simple contracts require a consideration to support them, and ordinarily it must be expressed in the memorandum, but by the Mercantile Law Amendment Act, 1856, Section 3, it is enacted in respect of guarantees that: "No promise is to be deemed invalid by reason only that the consideration for such promise does not appear in writing." The consideration, nevertheless, must exist, but may, if necessary, be proved by parol evidence. In cases where the promise is to answer for a debt which at the time of making the promise has been incurred, it must be supported by a new consideration, when that of "forbearance to sue" is the one most usually met with (see *Morley v. Booth*, 3 Bing 107).

*Stamp.*—A guarantee must ordinarily be stamped (6d.), otherwise it cannot be given in evidence; but a guarantee for the payment of goods to be furnished to third persons need not be, as it is within the exception of the Stamp Act, 1870, as being a contract for or relating to the sale of goods (see *Chatfield v. Cox*, 18 Q.B. 321).

Since the promise is one to be answerable for another person, it implies an original contract as well as a collateral one, and therefore contemplates three parties, who may be called the creditor, the debtor, and the promisor, one of whom, the creditor, is a party to both contracts. In order, therefore, for a promise to come within the statute there must be a debt or liability of the other person which the promise answers for (*Lakeman v. Mountstephen*, L.R. 7, H.L. 24), the promisor having no liability whatsoever in respect of the original contract. Such a promise is called a guarantee, while promises, though similar in characteristics, but not required to be in writing, are indemnities.

In dealing with the relationship and liabilities of the various parties, the first matter to be noticed has reference to the promise itself. The statute refers to promises made to

answer for the debt, &c., of another person, which means that the promise must be made to some person other than the debtor; and, since no person has any right or liability in respect of a contract unless he can claim or be charged as a party thereto or through a party as a trustee or agent, it follows that *the promise must be made to the creditor.*

In *Eastwood v. Kenyon* (11 A. & E. 438) the plaintiff was liable to one Blackburn on a promissory note, and the defendant for a valid consideration promised the plaintiff that he would discharge the note. Denman, C.J., in his judgment, said "We are of opinion that the statute applies 'only to promises made to the person to whom another is answerable.'"

Again, in *Reader v. Kingham* (13 C.B., N.S. 344), one Malins had recovered judgment against one Hitchcock. A warrant was obtained for the commitment of the latter and given to the plaintiff, bailiff of the Court, for execution. He was about to arrest the debtor when the defendant verbally promised the plaintiff either to pay the sum or surrender Hitchcock on the following Saturday. The defendant failed to carry out his promise, hence the action. The arrest and imprisonment would not have discharged or extinguished the debt. It was held that the promise was not one within the statute, upon the same grounds as in *Eastwood v. Kenyon* (*supra*).

Also in *Hargraves v. Parsons* (11 M. & W. 570), where a person assigned the benefit of a debt or contract to which he was entitled and undertook to answer for the same to an assignee, the undertaking was held not to be a guarantee because the debt or liability was due to himself and not the assignee.

In order to evolve the principles of liability in respect of a contract of guarantee, one must take the case of *Fitzgerald v. Dressler* (7 C.B., N.S. 374), wherein Cockburn, C.J., after referring to the notes to *Forth v. Stanton* (1 Wms. Saunders 211) proceeded:—"The fair result seems to be that the 'question whether each particular case comes within 'Section 4 of the statute or not depends, not on the consideration for the promise, but on the fact of the original 'party remaining liable, coupled with the absence of any 'liability on the part of the defendant or his property except 'such as arises from his express promise.'"

[It should be noted that the case there discussed was one belonging to a certain class called "property cases," which will be referred to later.]

In the above dictum the leading features are the liability of the debtor and the absence of liability of the promisor, which will be treated separately.

#### (A.)—The Debtor's Liability.

It follows, therefore, that unless the original party—that

is, the debtor—remains liable, the promise is not a guarantee, so that

- (1) If at the time that the promise is made no liability (a) is attached to the other person, or (b) is contemplated to attach at some future time, or
- (2) If, upon the promise being given, the liability, which thus was attached to the other person, becomes thereby extinguished,

the promise in neither case is one within the statute.

- (1) As to the first proposition:—

- (a) In such a case there can only be one contract, and the person who otherwise would be the promisor is, in fact, the debtor. Whether or no the other person does also remain liable—which question is often raised in defence so as to escape liability on the ground that the promise was a guarantee, but not in writing—can only be decided by considering the circumstances of each particular case and discovering to whom the credit has been given.

#### Examples:—

A promise to pay for goods sold and delivered to another person, upon the latter's credit, is within the statute, whereas a promise to pay for goods supplied to another person, upon the promisor's credit, is not.

A promise to pay for goods, not being necessities, supplied to an infant is not within the statute, because no liability attaches to the infant for such (*Harris v. Huntbach*, 1 Burr. 375).

In *Birkmyr v. Darnell* (6 Mod. 248) it was decided that unless the creditor has a right of action against the debtor the promise is not within the statute.

- (b) Unless such contemplation be fulfilled, the promisor—although the promise be in writing—cannot be held liable, because in such a case there is no debt, &c., for which the other person is liable. In other words, there is a failure of consideration.

- (2) As to the second proposition:—

If the promise extinguishes the liability of the third person there can be no principal debtor (see *Birkmyr v. Darnell*, *supra*). Under the old law the discharge of a debtor taken under a writ of *ca. sa.*, destroyed the debt, and many cases can be found holding that a promise to pay the debt, whereupon the person was released, was not within the statute (*Goodman v. Chase*, 1 B. & A., 297; *Lane v. Burghart*, 1 Q.B. 933).

#### (B.)—The Promisor's Liability.

It now becomes necessary to deal with that part of the ruling set forth in the words "coupled with the absence of any 'liability on the part of the defendant or his property,

"except such as arises from his express contract" (*Fitzgerald v. Dressler, supra*).

If such liability be present the promise is not a guarantee, even though the due performance of the promise involves the payment of the debt of a third person.

In *Fitzgerald v. Dressler (supra)* the learned Judge proceeded, "there must be absence of prior liability on the part of the defendant or his property, it being, as I think, truly stated, as the result of the authorities, that if there be something more than a mere undertaking to pay the debt of another, as where the property, in consideration of the giving up of which the party enters into the undertaking, is in point of fact his own, or is property in which he has some interest, the case is not within the statute, which was intended to apply to the case of an undertaking to answer for the debt, default, or miscarriage of another, where the person making the promise has himself no interest in the property which is the subject of the undertaking."

This case being a "property" case, Stirling, L.J., in *Harburg India Rubber Co. v. Martin* (1902, 1 K.B. 791), said that the words "has himself no interest in the property" must be taken as being equivalent to "has no interest in the transaction," and in that sense would cover all classes of indemnity cases. The word "interest" meaning some species of interest which the law recognises.

In the above case Stirling, L.J., suggested that the "interest" held by a person as a shareholder in a company was not such a legal interest therein so as to cause an undertaking given by him on behalf of the company to be an indemnity.

The question as to "interest" arises in those two classes of cases that are commonly called "property" cases and "*del credere*" cases, and it will be as well therefore to explain those terms.

"Property" cases are those in which either the person who made the promise had property which he wished to relieve from liability or there was property which he wished to acquire—*e.g.*, where in consideration of the landlord not taking goods of the tenant out of possession of the broker, the latter promised to pay the rent out of the proceeds of the sale (*Williams v. Leper*, 3 Burr. 1887). Again, where a person, having purchased goods which are subject to a lien, obtains delivery of them upon a verbal promise to pay off the lien (*Fitzgerald v. Dressler, supra*).

These cases seem really to be original contracts—independent of the other person's liability—because had the creditor obtained such an undertaking it is fair to presume that the promisor would never have had his request granted.

"*Del credere*" cases are those in which an agent becomes answerable for the credit of persons introduced by him to

his principal (see *Conturier v. Hastie*, 8 Ex. 40; and *Sutton v. Gray*, 1894, 1 Q.B. 285).

With reference to these two classes of cases, Vaughan-Williams, L.J., in *Harburg India Rubber Co. v. Martin*, lays down a general rule of great importance, viz: "Whether you look at 'property' cases or '*del credere*' cases it seems to me that in each of them the conclusion arrived at was that the contract in question did not fall within the action because of the object of the contract. In each of those cases there was in truth a main contract—a larger contract—and the obligation to pay the debt of another was merely an incident of the larger contract. As I understand those cases, it is not a question of motive—it is a question of object. You must find what it was that the parties were in fact dealing about. What was the subject-matter of the contract? If the subject-matter of the contract was the purchase of property, the relief of property from a liability, the getting rid of encumbrances, the securing greater diligence in the performance of the duty of a factor, or the introduction of business into a stockbroker's office: in all those cases there was a larger matter which was the object of the contract. That being the object of the contract, the mere fact that, as incident to it—not the immediate object, but indirectly—the debt of another to a third person will be paid, does not bring the case within the section. This definition, or rule for ascertaining the kind of cases outside the section, covers both 'property' cases and '*del credere*' cases." And again: "So far as I can see, the authorities have left us with a general rule (as above), and each of these two classes falls within that general rule."

Applying that rule, one must see whether any larger contract can be found; if not, the promise will be a guarantee, otherwise an indemnity.

It is, however, necessary to bear in mind cases such as *Guild & Co. v. Conrad* (1894, 2 Q.B. 885), where the defendant promised verbally to provide the plaintiff with funds to meet certain bills, if he (the plaintiff) would accept them. Such an agreement is, in fact, an original one to indemnify the plaintiff, for, as Davey, L.J., in his judgment therein, said: "In my opinion there is a plain distinction between a promise to pay the creditor if the principal debtor makes default, and a promise to keep a person who has, or is about to enter into a contract of liability indemnified against that liability independently of the question whether a third person makes default or not." Further, applying the above rule, what was the object of the promisor? Surely it was to obtain the acceptance of the bills.

There is yet another class of cases that one meets with, where the agreement really amounts to a sale either of a security for a debt or the debt itself by the creditor to the

promisor, when the promise is not one within the statute. For example:—

The plaintiff had a lien on certain policies effected for his principal, for whom he had given acceptances. The defendant promised to meet such acceptance in consideration of the plaintiff handing him the policies (*Castling v. Aubert*, 2 East 325).

Again, a person being insolvent, a verbal agreement was made between some of his creditors and the defendant, whereby the latter agreed to pay the creditors 10s. in the pound in satisfaction. This they agreed to accept and assign their debts to the defendant (*Anstey v. Marden*, 1 N.R. 124).

The above cases contain the various rules to be applied in order to come to the conclusion whether a particular promise is within the statute or not; often it will be found to fall under more than one of the rules—for example, *Williams v. Leper* (*supra*), which may be shortly summarised thus:—

- (1) The promise must be made to the creditor.
- (2) "The other person" must remain or become subsequently liable to the promisee or creditor.
- (3) There must be no liability on the part of the promisor in respect of the original contract.
- (4) The main and immediate object of the agreement must be the payment of a debt or fulfilment of a duty by a third person.
- (5) The transaction must not in reality amount to a sale by the creditor to the promisor.

#### *Rights and Liabilities.*

A guarantee or indemnity is construed presumptively to be commensurate with the matter guaranteed or indemnified, but limited by the terms of the agreement. It may be in respect of one transaction, a certain amount, or credits and debts contracted from time to time, but in all cases the liability will be limited to the amount of damage sustained or the amount as fixed.

Therefore, a guarantee of a certain debt, or of a person in the performance of an office or duty, cannot be revoked by the promisor during his life, nor does his death determine it, because the consideration has been given once for all; but in case of default by the party guaranteed the promisor may give notice to the creditor, and so preclude him in equity from dealing further at the surety's risk (see *Burgess v. Eve*, L.R. 13 Eq. 458).

Questions often arise whether a guarantee is a continuing one or not, especially in cases where a certain amount is guaranteed. The difficulty being as to whether the guarantee is to be until the amount has been reached, or whether it is to continue until recalled and the promisor to be liable on the balance of the account. No definite rules

can be laid down, though the tendency is to consider them continuing until revoked. The only way of coming to a decision is to consider the written agreement, the circumstances of the case, and see what was the real intention of the parties, and for this purpose extrinsic evidence will be admitted (*Wood v. Priestnor*, L.R. 2 Ex. 282).

In cases of joint promisors, any one of them is liable to pay the whole amount, unless the terms of the guarantee provide otherwise, but he will have certain rights, as will be noticed hereafter. The promisor cannot insist upon the creditor suing the debtor before calling upon him.

*Defence.*—The defence that the agreement was not in writing is a statutory defence, and therefore must be specially pleaded.

#### *Rights of Promisors.*

Guarantees are in effect contracts of insurance as to the honesty, solvency, or capacity of a person with respect to some employment, debt, or transaction. But the non-disclosure of material facts is not so serious as in other contracts of insurance (*uberrima fidei*) (*Railton v. Mathews*, 10 A. & F. 935; *North British Insurance Company v. Lloyd*, 10 Ex. 523; *Seaton v. Burnand*, 1900, Ap. Cas. 135). In guarantees, the avoidance on the ground of non-disclosure depends in each case whether, having regard to the nature of the transaction and relation of the parties, the fact not disclosed is impliedly represented not to exist (*Phillips v. Foxall*, L.R. 7, Q.B. 679). The promisor is entitled to know such arrangements or relations as exist between the creditor and debtor as may make his position different to what he reasonably expected (*Hamilton v. Watson*, 12 A. & F. 934). If there be such non-disclosure the guarantor has a right to avoid the agreement. For example:—

A bank taking a guarantee for a customer's account without disclosing that it was already overdrawn. No ground for avoidance. It might be reasonably supposed such was the case, as otherwise no guarantee would have been required (*Hamilton v. Watson*, 12 A. & F. 934). A person taking a guarantee for continuing a servant in his employ and not disclosing previous misconduct while in his employment. That implies trustworthiness on the part of the servant, and would be ground for avoidance (*Smith v. Bank of Scotland*, 1 Dow 272).

A guarantee given for a certain sum to be then advanced, but a large part of it was retained by the creditor in payment of a prior debt, was held to be ground for avoidance (*Stone v. Compton*, 5 Bing. N.C. 142).

Guarantees may be given upon the express condition that full disclosure shall be made as in other contracts of insurance, in which case any misrepresentation or non-disclosure, independent of fraud, avoids the guarantee.

*Rights against the Creditor.*

The promisor is entitled to be placed in the same position as the creditor consequently to all judgments, securities given by the debtor, and other rights obtained by the creditor. He need not have known of them at the time of contracting, and they will include securities acquired by the creditor since the date of contract.

By the Mercantile Law Amendment Act, 1856, Section 5: "Every person who, being a surety for the debt or duty of another, or, being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him or to a trustee for him, every judgment, specialty, or other security, which shall be held by the creditor in respect of such debt or duty whether the judgment, specialty, or other security shall or shall not be deemed in law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor by the means aforesaid more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable."

Any securities obtained by a co-surety from the debtor will be for benefit of all the sureties (*Steel v. Dixon*, L.R. 17, C.D. 825).

The promisor, upon paying the debt and giving an indemnity for costs, is entitled to sue the debtor and enforce all securities against him in the right and name of the creditor (*Padwick v. Stanley*, 9 Hare 628).

The promisor is entitled to any priority that the creditor had (*In re Churchill*, L.R. 39, Ch.D. 174).

If the guarantee is for part of the debt only, the promisor will only have partial rights to any securities, including the right to prove in the bankruptcy of the debtor for the same (*Hobson v. Bass*, L.R. 6, Ch. 792), unless he has expressly agreed to allow the creditor to prove for the whole amount. Since the promisor is entitled to the securities of the creditor, it is the latter's duty to keep the securities intact (*Forbes v. Jackson*, 19 Ch.D. 615).

Therefore if the creditor releases, or loses, or depreciates any remedies or securities to which the promisor upon payment would be entitled, the latter is discharged to the amount by which the same are lost or depreciated (*Taylor v. New South Wales Bank*, L.R. 11, App. Cas 596). But if the debtor becomes bankrupt the creditor may, since the bankruptcy laws allow it, elect to surrender his security and prove for the full debt without releasing the promisor (*Rainbow v. Juggins*, 5 Q.B.D. 138).

But allowing the statute limitations to run is no discharge of the promisor, because he could have paid off the debt and sued the debtor (*Carter v. White*, L.R. 25, Ch.D. 666).

*Rights against Principal Debtor.*

The promisor when called upon to pay all or any part of the debt is entitled to an indemnity in full from the principal debtor, and that includes interest, otherwise he would not be completely indemnified (*Petrie v. Duncombe*, 20 L.J., Q.B. 242).

The promisor for his own protection, especially as to costs, should, when called upon to pay, give notice of the claim to the debtor and allow him to admit or defend the same, so that questions may not afterwards arise whether the claim was properly admitted or defended and thereby rendering him liable for costs (*Duffield v. Scott*, 3 T.R. 377; *Parker v. Lewis*, L.R. 8, Ch. 1058).

The promisor has also the right of enforcing the securities given by the debtor to the creditor, as stated above (see Rights against Creditor).

*Rights against Co-promisors.*

Where several persons are co-promisors for the same debt and any one of them is called upon to pay more than his share, he has the right to contribution from the others proportionately to the amounts for which each is surety (*Dering v. Winchelsea*, 1 Cox 318); but he has no claim until he has paid more than his share, unless it operates in discharge of the whole debt, leaving no further liability upon the promisors. If one of them becomes bankrupt, or is unable to pay, the contribution of the others will be increased accordingly (*Lowe v. Dixon*, L.R. 16, Q.B.D. 458; *Ellesmere Brewery Co. v. Cooper*, 1896, 1 Q.B. 75).

Any securities held by any co-promisor and taken from the debtor in respect of the undertaking are to be treated as for the benefit of all (*Steel v. Dixon*, L.R. 17, Ch.D. 825).

(See Mercantile Law Amendment Act, 1856, Section 5, *supra*).

Upon the death of a co-promisor, his estate would be liable for contribution—but in cases of continuing guarantees the liability may be varied (see later, under Discharge).

*Discharge of Promisor.*

A promisor is entitled to discharge upon any of the grounds that suffice to terminate contracts in general—*e.g.*,

agreement, payment, fraud, alteration of the written instrument, failure of consideration, &c., but there are some that are peculiar to guarantees.

*Effect of New Agreement.*—A new agreement with the debtor in variation or discharge of a former agreement operates as a discharge of a surety who has guaranteed it. The new agreement does not affect him, unless he consents to continue surety for it (*Nash v. Armstrong*, 10 C.B., N.S. 259). For example, enlarging time for payment, dispensing with any securities stipulated for in the contract, material alteration in the office or duties guaranteed.

It is not, however, that every alteration will discharge the surety, because it might be quite unsubstantial or beneficial to the surety, but in such cases the variation must be self-evident that it is not material or prejudicial to the surety; if it is not self-evident, the surety is the sole judge whether he will remain liable (*Holme v. Brunskill*, L.R. 3, Q.B.D. 495).

The discharge will not take effect in the following cases:—

(1)—(i.) Where the creditor gives time to the debtor and expressly reserves his right against the surety.

(ii.) If the giving of time does not interfere with the surety's remedies. This is on the grounds that it shows no intention to discharge the surety, and since the debtor consents to the reservation, the surety has recourse against him, and therefore may pay off the creditor and enforce the rights against the debtor (*Kearsley v. Cole*, 16 M. & W. 128).

(2) The absolute discharge of the debtor is the discharge of the surety.

But a covenant not to sue the debtor, with reservation against the surety, will not release the latter (*Price v. Barker*, 4 E. & B. 706).

(3) In case of the negligence of the creditor in his dealings with the debtor, or misuse or loss of securities held by him for his claim, which cause detriment to the surety, will cause the discharge of the surety to the extent of the loss occasioned as above (see *Mayor of Durham v. Fowler*, 22 Q.B.D. 394; also *Carter v. White*, 25 Ch.D. 670).

(4) Where the creditor accepts a new security from the debtor in place of the original security, or of such kind that operates as a merger of the old security (see *Boaler v. Mayor*, 19 C.B., N.S. 76).

(5) If the surety has entered upon the undertaking on the faith that some other person or persons shall also enter into the undertaking, but such person or persons refuses or refuse to or does or do not enter into the undertaking, the person who has entered upon the undertaking is entitled to be discharged (see *Ward*

*v. National Bank of New Zealand*, 8 Ap. Cas. 755; *Ellesmere Brewery Co. v. Coofor*, 1886, 1 Q.B. 75).

(6) By the Partnership Act, 1890, Section 18, a continuing guarantee given either to a firm or a third person in respect of the transactions of a firm is, in the absence of any agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given.

(7) Neither the discharge in bankruptcy nor the acceptance of an arrangement by the creditors of the debtor will discharge the sureties (see Bankruptcy Act, 1883, s. 30 (4); Bankruptcy Act, 1890, s. 3).

(8) If the guarantee be a continuing one and the consideration be divisible, the surety may by notice revoke the guarantee at any time - except as to past transactions—unless a certain time of notice is expressly stipulated (*Offord v. Davies*, 12 C.B., N.S. 748).

(9) Death of the surety will revoke a continuing guarantee if the consideration be divisible, and his estate will not be liable for transactions subsequent to, and with notice of, the death (*Coulthart v. Clementson*, L.R. 5, Q.B.D. 42). But the death of one co-surety does not affect the liability of the others (*Beckett v. Addyman*, L.R. 9, Q.B.D. 783).

*In re Cran* (1902, 1 Ch. 733) decided that if notice has to be given to revoke a continuing guarantee, knowledge of the surety's death is not sufficient.

#### Statute of Limitations.

The right of action against a promisor accrues and the statute begins to run immediately upon default of the debtor, time not being postponed by reason of disputes arising between the debtor and creditor (*Colvin v. Buckle*, 8 M. & W. 680).

As to co-promisors, the right to contribution arises as soon as one of them has, in fact, paid more than his share, and the statute runs from that date. The right of the promisor against the debtor for money paid accrues at the time he pays the debt (*Davis v. Humphreys*, 6 M. & W. 153; *Re Snowden*, L.R. 17, Ch.D. 44).

### Leicester Society of Chartered Accountants.

THE fifth annual meeting of the Society was held at Winchester House, 1 Welford Road, Leicester, on Friday, 30th March 1906, at 4.30 p.m. The President of the Society (Mr. J. A. Hopps, F.C.A.) occupied the chair, and there was a fair attendance of members.

The following are the

### REPORT AND ACCOUNTS.

The Council beg to present their fifth annual report.

The number of members on the roll of the Society at the 31st December 1905 was 34. This is an increase of four as compared with last year. Five new members have been elected during the year, and the Society has lost one through death.

The Council desire to place on record their deep and sincere regret at the death during the year of Mr. T. A. Wykes, last year's President of the Society.

The fourth annual meeting of the Society was held on March 17th 1905, at 25 Friar Lane. After the meeting the members dined together at the Leicestershire Club.

At the last annual meeting the question of Compulsory Students' Classes in Law and Accountancy was discussed and finally referred back to the Council to draw up a scheme for presentation to a special general meeting. A scheme was eventually decided on and a special general meeting was called for the 29th May 1905, but as a quorum was not present no decision was arrived at. It was then thought best that the Hon. Secretary should circularise every member of the Society, enclosing a copy of the scheme and a form of assent thereto. Replies were eventually received from nearly all the members, but, owing to a considerable difference of opinion as to the advisability of making the classes compulsory and inserting a provision to that effect in all articles of clerkship used for the future by members of the Society, the matter has necessarily been allowed to drop. At the same time the classes are being held weekly, and are of great assistance to the students. A grant of £30 towards the cost of the classes is received from the Institute, and the balance is subscribed by the students themselves.

The Council note with satisfaction that 24 members of this Society subscribe to the Chartered Accountants' Benevolent Association.

The following members of the Council retire in accordance with Rule 23, and are not eligible for re-election at this year's meeting:—

Mr. J. H. Baker,

„ R. R. Preston.

There is a further vacancy, as Mr. A. J. Halford, who was elected last year, does not wish to serve.

The vacancy caused by the death of Mr. T. A. Wykes was filled by the Council by the election of Mr. A. H. Hampson.

The following is an extract from a letter recently received from the Secretary of the Institute:—

“Attention has been drawn on several occasions to the practice of some members of the Institute of paying for the insertion of their names, or the name of their firm, in heavy or leaded type in Post Office and Local Directories and Telephone Lists. There can be no doubt that this is a form of advertisement and, although it is more than likely that it has never occurred to the persons in question that it is such, the Council are anxious to put a stop to it.

It is not their wish to deal with these cases as cases of professional misconduct under the Charter and By-laws in the first instance, as they feel sure that it is only necessary to call the members' attention to the point in order to prevent recurrence.”

The Council of your Society hope that members of the Society will co-operate to put a stop to the practice alluded to.

The Hon. Treasurer's Statement of Accounts for the year ended 31st December 1905 (duly audited) is appended hereto.

J. ALFRED HOPPS,

President of the Council.

25 Friar Lane, Leicester.

12th March 1906.

Dr.

### BALANCE SHEET at 31st December 1905.

Cr.

	Liabilities			
	£	s	d	£ s d
To Accumulated Fund, as at 31st December 1904	112	19	7	
Less Excess of Expenditure over Income for year 1905 .. .. .	1	18	7	
				111 1 0
				<u>£111 1 0</u>

	Assets			
	£	s	d	£ s d
By Cash at Bank				30 12 0
Library Books—as at 31st December 1904	56	0	0	
Additions .. .. .	3	8	0	
				59 8 0
Less Depreciation at 20% .. .. .				12 8 0
Library Furniture—as at 31st December 1904	30	0	0	
Less Depreciation at 10% .. .. .	3	0	0	
				27 0 0
Institute Grant for 1905 .. .. .				6 9 0
				<u>£111 1 0</u>

Dr.	REVENUE ACCOUNT for the year ended 31st December 1905.										Cr.					
To Library Rent and Expenses .. .. .						£	s	d	By Members' Subscriptions.. .. .					£	s	d
■ Printing, Stationery, and Sundries .. .. .						10	0	0	■ Institute Grant for Library .. .. .					35	3	6
■ Grant to Students' Society .. .. .						13	3	1	■ Students' Society for use of Library .. .. .					6	9	0
■ Depreciation on Library:—						10	0	0	■ Balance—Excess of Expenditure over Income carried to					5	0	0
Books at 20% .. .. .					£12	8	0		Accumulated Fund .. .. .					1	18	7
Furniture at 10% .. .. .					3	0	0									
						15	8	0								
						£48	11	1						£48	11	1

The Report of the Council and the Hon. Secretary and Treasurer's accounts, as audited, were read and adopted.

The following officers of the Society were elected for the ensuing year:—

President, Mr. H. W. Wilshire, F.C.A. Vice-President, Mr. G. S. Bankart, A.C.A. Ordinary members of the Council, Messrs. A. P. Carryer, A.C.A., J. Cherry, F.C.A., A. B. Wykes, F.C.A., and A. H. Hampson, A.C.A. Hon. Secretary and Treasurer, Mr. D. M. Gimson, A.C.A. Hon. Auditor, Mr. F. W. Preston, A.C.A. Hon. Librarian, Mr. S. R. Wilby, A.C.A.

The meeting closed with a vote of thanks to the retiring officers.

The annual dinner of the Society was held in the evening at the Leicestershire Club, Leicester. Mr. H. W. Wilshire, F.C.A., presided, and was supported by the Hon. Geo. Colville (Secretary of the Institute), Messrs. S. P. Derbyshire, F.C.A. (President of the Nottingham Society of Chartered Accountants), W. R. Hamilton, F.C.A. (Hon. Secretary of the Nottingham Society of Chartered Accountants), C. E. Whitmore (President of the Leicester Chamber of Commerce), R. Harvey (President of the Leicester Law Society), W. Penn-Lewis (Borough Treasurer), M. W. Jenkinson, A.C.A., E. Huntsman, W. Langley, G. E. Newill, B. S. Baldwin, and the following members of the Society:—J. H. Baker, A.C.A., F. W. Boothroyd, A.C.A., P. A. Bates, A.C.A., C. H. Bolton, A.C.A., G. S. Bankart, A.C.A., W. H. Chamberlin, A.C.A., D. M. Gimson, A.C.A., J. A. Hopps, F.C.A., D. McAlpin, A.C.A., C. H. Spencer, A.C.A., A. E. Warburton, A.C.A., and S. R. Wilby, A.C.A.

The toast of "The King" having been proposed and loyally honoured,

The Chairman proposed "The Institute of Chartered Accountants," and associated the name of the Hon. George Colville with the toast.

Mr. J. A. Hopps proposed "the Visitors," and Messrs. R. Harvey, W. R. Hamilton, and S. P. Derbyshire having replied, the business of the meeting was concluded.

An excellent programme of music was afterwards much enjoyed.

## Reviews.

### Grey's Scale for converting Pounds, Quarters, and Cwts. to Decimals of a Ton.

London, 1906: Van Neck & Co., 72 Buckingham Gate, Westminster, S.W. Price 2s.

This scale consists of a cardboard slide rule very ingeniously arranged, so that in a single operation any fraction of a ton expressed in cwts., quarters, and pounds may be at once converted into decimals of a ton. In addition to being found of value to engineers and shippers, it will no doubt prove useful upon occasion to accountants and others. Doubtless, also, it may suggest how other special calculations may be readily resolved by the preparation of such slide rules, which can be inexpensively constructed. Upon the back are tables showing ounces and half-ounces expressed as decimals of a ton, and quarters and pounds expressed as decimals of a cwt.

### Principles of the Law of Partnership.

By ARTHUR UNDERHILL, M.A., LL.D., Barrister-at-Law.

London, 1906: Butterworth & Co., 11 & 12 Bell Yard, Temple Bar. 2nd Edition. Price 5s.

The volume now before us makes no pretence to being a text-book on the law relating to Partnerships, but rather at providing a general sketch of the salient features attaching to that interesting branch of the law, and as such it will probably prove of especial value to the accountant student, whose requirements are rather in the nature of a good broad outline than the minutiae of detailed shading. The work is divided into six chapters, dealing with the essential elements of partnership, creation of a partnership, relation of partners to persons dealing with them, the relation of partners to one another, the dissolution of the firm, and the insolvency of all or some of the partners; to which is added, as an Appendix, the text of the Partnership Act, 1890. The 2nd Edition has been brought thoroughly up to date, and will be found *inter alia* to deal with the effect of the decision in *Garner v. Murray*; concerning which it is stated that all that



the rule means is that there is no necessary connection between the proportion in which capital is contributed and that of profit and loss, and that therefore, *prima facie*, partners share profits and bear losses equally, notwithstanding that the capital contributed by each may not be equal. From the point of view of an accountant this can, perhaps, hardly be said to exhaust the whole subject, but it seems to us that the effect of the decision in *Garner v. Murray* is not nearly so wide as has been supposed in certain quarters.

## The Chartered Accountants' Golf Club.

### Singles Tournament.

E. Cooper walked over ; D. Hill, Junr., scratched.  
S. Cronk beat J. W. Barber by 1 up.  
H. Wingfield beat D. D. Robertson by 1 up.  
G. Dixey beat G. M. Gilbert.  
T. G. Mellors walked over ; H. M. Smith scratched.  
S. C. Leonard beat C. F. Burton.  
H. W. D. Soper beat H. F. Turner by 5 and 4.  
T. M. Till beat F. W. Pixley.

The Final will be played on May 3rd—not May 6th, as stated on the draw—at Northwood, by kind permission of the Northwood Golf Club.

A match will be played against the London Solicitors' Golfing Society on Wednesday, the 9th May next, at Richmond, by kind permission of the Mid-Surrey Golf Club.

## Meetings for the ensuing Week.

**Wednesday**—LONDON CHARTERED ACCOUNTANT STUDENTS SOCIETY.—Twenty-third Annual General Meeting, at the Hall of the Institute, Moorgate Place ; 5.30 p.m.

KINGSTON-UPON-HULL CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Reading of the President's Prize Essays, at the Hall of the Incorporated Law Society, Bowlalley Lane ; 7.45 p.m.

## Without Prejudice.

(From *The Solicitors' Journal*.)

FAMILIAR as the above words must be to every member of the legal profession, it may yet be doubted whether there generally exists a true appreciation of the consequences that attach to the use of them. When regard is had to the constant recurrence of the phrase in everyday practice

(especially in a correspondence concerning some proposed compromise of matters in dispute between opposing parties, whether prior to or during the subsistence of litigation), the desirability of an accurate knowledge of the effects produced becomes apparent. The writer has accordingly endeavoured to collect, as far as possible, all the reported cases in which the phrase has been the subject of judicial comment or decision, and it will be seen that there has not been by any means a concurrence of opinion on the subject.

Almost the earliest case in which the protection afforded by the words "without prejudice" was discussed was *Paddock v. Forrester* (3 Scott N.R. 715), where Tindal, C.J., in refusing to admit certain letters written "without prejudice" and submitted as evidence of a demand for compensation, said: "It is of great consequence that 'parties should be unfettered by correspondence entered 'into upon the express understanding that it is to be 'without prejudice'; and it would be hard indeed to hold 'that a letter which is stated to be written 'without prejudice' is admissible in evidence, because the same terms 'are not adopted in the reply. When used in the letter 'containing the offer, the words 'without prejudice' must 'cover the whole correspondence.' Thus the principle was laid down that letters written "without prejudice" must not be used to the damage of the writer, and that a reply to an offer so couched is covered by this protection. This view was followed in the case of *Hoghton v. Hoghton* (15 Beav. 278), and again in *Jones v. Foxall* (15 Beav. 396), though it appeared in the latter case that different views had at other times prevailed, if one may judge from the following words of Romilly, M.R.: "In my opinion such 'letters and offers are admissible for one purpose only—'namely, to show that an attempt has been made to compromise the suit, which may sometimes be necessary, as, 'for instance, in order to account for the lapse of time, 'but never for the purpose of fixing the person making 'them with any admission contained in such letters; and 'I shall do all I can to discourage this modern, and, as 'I think, most injurious practice."

It was when the question of costs came to be considered that the sacredness of the privacy created by the phrase to which this article relates was subject to inroad on the part of judicial authority. In *Williams v. Thomas* (2 Dr. & Sm. 29) Kindersley, V.C., admitted a letter written by the defendant's solicitor "without prejudice" suggesting a compromise, and owing solely to the proposal so made, the learned Judge ordered the plaintiff to pay the costs. "He did not think it at all followed that if a person wrote 'a letter 'without prejudice' it was not competent for 'him to use it, although it could not be used against him.' And Wood, V.C., in another case adopted the same course

in similar circumstances, saying that "When a party has exhibited what he considers reasonable terms on a treaty 'without prejudice,' his course is quite evident and why he adopts it. It is as if he were to say 'I send you a proposal, and expect your answer, and shall make use of your answer with a view to costs'": *Woodward v. Eastern Counties Railway* (1 Jur. N.S. 899).

In this state of the authorities, the matter came before the Court of Appeal in 1889, again under exactly similar circumstances involving a question of costs, where Huddleston, B., had deprived the plaintiff of costs after reading letters written with the same reservation. The Court allowed the appeal, and the following passage from the judgment delivered by Esher, M.R., is cited as showing the principles now laid down by binding authority as applicable to the case. "It is, I think, a good rule to say 'that nothing which is written or said 'without prejudice' should be looked at without the consent of both parties, otherwise the whole object of the limitation would be destroyed": *Walker v. Wilsher* (23 Q.B.D. 335). It may be mentioned that *Woodward v. Eastern Counties Railway* was not cited, and it was wrongly stated that *Williams v. Thomas* was the only authority for the admission of the evidence in question.

Again, the question whether a letter written "without prejudice" could be used as an acknowledgment to take a debt out of the Statute of Limitations was decided in the negative in the first case in point of time in which (so far as the writer has been able to ascertain) the phrase in question has been discussed: *Cory v. Breton* (4 C. & P. 462). And the question was similarly decided in *Re River Steamer Co.* (L.R. 6 Ch. App. 831), though *Cory v. Breton* was not cited.

A very curious point with reference to the use of the phrase arose in *Kurts & Co. v. Spence & Sons* (59 L.J. Ch. 238), which was an action, under Section 32 of the Patents Act, 1883, in respect of threats of action being taken on refusal of certain terms offered in letters and conversations which contained the threats in question, and were expressed to be "without prejudice." Kekewich, J., held that, notwithstanding this fact, such letters and conversations were admissible as evidence of the threats. His judgment contains so admirable a summing up of the principles applicable that it is ventured to set out *in extenso* the following passage: "These letters and these interviews were 'without prejudice.' What I understand by that—I shall not attempt to define the words 'without prejudice'—what I understand by negotiation 'without prejudice' is this: The plaintiff or defendant—a party litigant—may say to his opponent: 'Now you and I are likely to be engaged in severe warfare; if that warfare proceeds, you understand that I shall take every advan-

"tage of you that the game of war permits; you must expect no mercy, and I shall ask for none; but, before bloodshed, let us discuss the matter and let us agree that, for the purpose of this discussion, we will be more or less frank; we will try to come to terms, and nothing that each of us says shall ever be used against the other so as to interfere with our rights at war, if, unfortunately, war results.' This is what I understand to be the meaning, not the definition, of 'without prejudice.' But if when those parties meet, one of them says to the other, 'Now we are going to meet and discuss this with a view to an amicable settlement, but I tell you frankly, with a view to induce an amicable settlement, that I do mean to take legal proceedings if we cannot settle; I mean to insist upon my rights if unfortunately we cannot agree to terms'; it would be far from consonant with justice if I shut out that threat and say that it is not a threat within Section 32, so as to enable the person against whom the threat is made to bring an action to restrain the continuance of it. I think that would be stretching 'without prejudice' too far, and in fact giving it a meaning which it was never intended to bear."

Recently the Court had, in a totally different connection, to consider the effect of the words. In the case of *Re Daintry; ex parte Holt* (1893, 2 Q.B. 116) a petition in bankruptcy had been presented, the act of bankruptcy on which it was founded being a notice by the debtor that he had suspended, or was about to suspend, payment of his debts. This announcement was contained in a letter written 'without prejudice.' It was urged that this letter was inadmissible to prove the act of bankruptcy, and this contention prevailed before the learned Registrar, who dismissed the petition for want of proof of the act alleged. On appeal, the Court reversed the Registrar's decision on the grounds shortly set out by Vaughan Williams, L.J., who thus stated the views of the Court: "In our opinion the rule which excludes documents marked 'without prejudice' has no application unless some person is in dispute or negotiation with another, and terms are offered for the settlement of the dispute or negotiation. . . . Moreover, we think the rule has no application to a document which in its nature may prejudice the person to whom it is addressed. . . . It seems to us that notice of an act of bankruptcy cannot be given 'without prejudice,' because the document in question is one which from its nature might prejudicially affect the recipient, whether or not he accepted the terms offered thereby."

But while the fullest effect possible will be given to the protection intended to be created, yet this must not be carried to an absurdity, and there are circumstances in which letters may, and will, be looked at despite the

presence of the words "without prejudice." In the course of the arguments before the Court of Appeal in *Grace v. Baynton* (21 S.J. 631) James, L.J., took occasion to say that he thought he had on several occasions expressed himself too strongly with regard to impropriety of using against a party to a litigation letters which had been written by him or on his behalf "without prejudice." He thought that the rule that such letters could not be used applied in strictness only to letters written with a view to a compromise or settlement of the matter in dispute. Such letters could not be used so as to prejudice the right of the party on whose behalf they were written to insist on his original demand. But if a man chose to write a letter saying "Pay me £10, or I will charge you with a felony, but this is without prejudice," there was no reason why such a letter should not be used against him.

The above decision concludes the writer's list of cases in point, with one exception, to which reference may be made for the sake of completeness. In *Morley v. Cook* (2 Hare, 115) it was laid down that a vendor who corresponded with a purchaser with a view to meeting the latter's objection to the title, thereby waived his, the vendor's, right to rescind under the rescission clause as then drawn. Wigram, V.C., in his judgment, said that he was not prepared to say that a skilful practitioner might not in all cases, by the addition of a few words in his answer to requisitions on title, such, for instance, as "without prejudice," obviate the effect of the rule laid down.

Accordingly the principles to be deduced from the authorities may be summed up as follows:—

(1) That a letter, written "without prejudice," containing an offer, must not be looked at at all to the prejudice of the writer, so far as the actual offer is concerned, but not so as to prevent the letter being admissible as evidence in certain other respects only incidental to, but not actually connected with, that offer, as, *e.g.*, for the purposes of bankruptcy proceedings.

(2) That when the offer is expressed to be made "without prejudice," the protection thereby afforded extends to the reply, whether so expressed or not, and to the whole correspondence concerning that compromise.

(3) That letters covered by this protection are not to be looked at without the consent of both parties, or, in other words, a person may not, as it has been expressed, and as appears to be often thought, "waive his own prejudice." If an offer be made "without prejudice," and the person to whom it is addressed refuse it, and in his letter of refusal makes another proposal for a compromise, the reply being made without any reservation, it would seem that this letter would be admissible as evidence of the counter-proposal, but must not be noticed so far as the original offer is concerned.

Reference may, in conclusion, be made to the fact that it has become a hard and fast rule (if experience in practice counts for anything) with a very large number of practitioners to insert the words "without prejudice" in every letter they write in any way suggesting or referring to an attempt to compromise a dispute in which their clients are concerned, and this however reasonable and proper may be the offer that is made on their client's behalf. The folly of such an unreasoning course only becomes apparent later on, when the question at issue comes on for trial, and it may be important to show that one party, at any rate, did all that a reasonable man could do to avoid litigation. Doubtless many members of the bar have had occasion to say to their clients, "Why did you write that letter 'without prejudice'?" It would have been most useful if "we could have read it." Probably most solicitors would answer that their client might be prejudiced by the publication at the trial of an offer to take less than his legal claim; but it is at least doubtful whether anyone will suffer damage through the knowledge of either Judge or jury that he has done his best to keep out of Court.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, April 6th, was 168, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 79; Deeds of Arrangement registered, 89. The respective numbers in the corresponding week of last year were: Bankruptcies, 118; Deeds of Arrangement, 95—total, 213; being a decrease of 45. The total number of commercial failures recorded during the 14 weeks of the present year is 2,407; the total number recorded in the corresponding 14 weeks of last year was 2,655, showing a decrease of 248.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, April 6th, was 157. The number in the corresponding week of last year was 190, showing a decrease of 33. The total number filed during the 14 weeks of the present year is 2,211; the total number filed in the corresponding 14 weeks of last year was 2,468, showing a decrease of 257.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, April 6th, amounted to £1,130,948, by way of addition to £745,882, previously issued by the same companies. The amount registered in the corresponding week of last year was £551,459 showing an increase of £579,489. The total amount registered during the 14 weeks of the present year was £23,391,080 (in addition to the issues in previous years by the same companies), as compared with £23,364,632 for the corresponding 14 weeks in 1905, showing an increase of £26,448.

## The Profession in Scotland.

### The Glasgow Chartered Accountants Students' Society.

#### Municipal Debt and Accounting.

By T. EATON ROBINSON, C.A.  
(City Registrar, Glasgow.)

A PAPER read to the members of the above Society on  
8th February 1906.

#### Debt.

The enormous increase in the indebtedness of local authorities during the past twenty years has, mainly on account of its connection with what is called municipal trading, and partly also to increased local rates, caused financiers, bankers, pressmen, and economists to devote considerable attention to the subject, with the result that so much has already been written on the points involved and the morals to be deduced that I very much fear I have been allotted a subject already done to death. However, as it has been my official duty to borrow on behalf of the Corporation of Glasgow direct from the public a larger amount than is administered by the staff of any other local authority in the United Kingdom, I suppose your Secretary thought some of my ideas and opinions might interest you. In these days, when beautiful lime-light views add so much to the attractiveness of a paper, I cannot but feel regret that debt and accounting form but sorry subjects for pictures, and your eyes would only be wearied by line upon line of figures thrown upon a screen. If I had sufficient influence to obtain views of some of the most interesting parts of the Bank of England and the Mint, I daresay a much more popular paper on Money might be presented, and with a judicious mixture of instruction and humour it might rank with some of the most popular lectures of the day.

I do not think absolutely reliable figures regarding the loan debt of local authorities have yet been published. Probably the most accurate figures have been given from time to time in the "Stock Exchange Official Intelligence," first edited by Sir Henry Burdett, and now by Mr. Torrens-Johnson.

The total local debt of England, Wales, and Scotland in 1882-3 was .. .. . £181,290,766  
and in 1902-3 it had risen to .. .. . 427,179,029  
or an increase in 20 years of .. .. . £245,888,263

The bulk of this enormous increase was for the purposes of remunerative undertakings—such as Water Works, Gas

Works, Electricity Undertakings, and Tramways, and this should always be taken into account when reasoning regarding the burden of debt.

It is estimated that in 1902-3 out of £427,179,029, £213,850,895 represents remunerative undertakings which provide all interest and sinking funds out of revenue, and not out of taxes.

So much has now been done to improve the health and amenities of the counties, towns, and parishes throughout the Kingdom that it may reasonably be hoped and expected debt during the next ten years will only increase in the same ratio as the growth of the towns and populous places.

The greater part of the existing debt of local authorities has been raised by the issue of stock and mortgages, but a large amount consists of annuities, debentures, and corporation bills.

The loan debt of the Corporation of Glasgow has been raised under Acts over 90 in number, and it amounted at 31st May last to £14,675,910 1s. 8d., divided as follows:—

#### Remunerative.

	£	s	d	£	s	d
Gas .. .. .	1,948,856	6	3			
Do. (on temporary loan) .. .. .	102,000	0	0			
Electricity .. .. .	1,206,332	1	0			
Water .. .. .	2,814,700	19	9			
Markets .. .. .	140,861	7	3			
City Improvements Acts, 1866 .. .. .	1,197,558	17	4			
Telephones .. .. .	302,936	13	4			
Common Good—						
Tramways .. .. .	£1,783,083	13	7			
For Halls, Bazaars, Ground, Heritable Property, Feu Duties, &c., say .. .. .	230,382	5	6			
		2,013,465	19	1		
				9,726,710	4	10

#### Unremunerative.

Police Departments (less Crosshill Sinking Fund) .. .. .	2,982,898	1				
Police Departments (on Temporary Loan) .. .. .	13,000	0	0			
Municipal Buildings (Capital) .. .. .	545,223	4	2			
Do. (on Temporary Loan) .. .. .	5,000	0	0			
Parks and Galleries (Capital) .. .. .	752,216	11	10			
City Improvements Act, 1897 .. .. .	484,468	14	5			
Prison Payment .. .. .	11,033	10	4			
Clyde Embankments .. .. .	101,971	0	0			
City of Glasgow Act, 1891 .. .. .	27,790	0	0			
Public Libraries .. .. .	16,048	2	5			
Girgenti Inebriates' Home .. .. .	9,548	12	2			
		4,949,197	16	10		
				£14,675,910	1	8

The old city improvement debt is placed under the heading "Remunerative," because the revenue is now meeting expenditure without the aid of taxation.

From this abstract it will be seen that, for a city of the size and importance of Glasgow, only a very reasonable amount is a burden on the rates, and the amount of our debt compares favourably with that of the large cities and towns of the Kingdom. For example, according to the "Stock Exchange Official Intelligence"—

London County Council owes .. ..	£44,620,266
Do. for Loans to Local Authorities	
in London .. ..	8,720,375
London (City) owes .. ..	5,993,250
Liverpool .. ..	13,793,857
Manchester .. ..	22,194,976
Birmingham .. ..	15,537,924
Sheffield .. ..	8,538,202
Leeds .. ..	11,933,838

and, as regards these cities, corresponding remunerative undertakings to those possessed by Glasgow are not in every case owned by the municipality. In estimating the burden of debt, whether moderate or excessive, the most important point to note is the proportion which is remunerative or reproductive, and the amount and nature of the corporate assets. It is estimated that the assets of the Corporation of Glasgow, after deducting all liabilities other than loan debt, amount to £19,350,000. With the exception of the common good, the loan debt of Glasgow has the advantage of being secured on the consolidated rates and property of the city, with an unlimited guarantee rate to provide for the unlikely contingency of default on the part of any department to make the statutory contributions to the Loans Fund for Interest and Sinking Fund. Stocks bearing interest at  $3\frac{1}{2}$ ,  $3\frac{1}{4}$ , 3, and  $2\frac{1}{2}$  per cent. have been issued since 1884, and mortgages for periods of years are current at interest varying from  $3\frac{1}{2}$  to 3 per cent. Annuities were created many years ago to provide for the purchase-prices of the water and gas undertakings, but the amount, which can be bought on the market, is much reduced owing to conversions and purchases by the corporation. The average rate of interest last year was a fraction under 3 per cent., but heavy stamp duties, and the expenses of borrowing and management, raised the overhead rate charged to the departments to  $3\frac{1}{4}$  per cent. I think you will admit this is a surprisingly low rate for these times.

The disturbance of the money market which accompanied the South African War, and has more or less prevailed to the present time, was accentuated by the Russo-Japanese War, and subsequent events. As a natural result prices of Consols and all gilt-edged stocks fell, and the value of money rose to an extent which embarrassed somewhat those municipalities and local authorities whose obligations compelled them to issue stock. Many municipalities, including Glasgow, preferred to borrow on mortgages for short periods of years rather than issue 3 per cent. stock at a large discount, and they also availed themselves, with the best results, of their powers to borrow by the issue of bills or promissory notes. Temporary loans also were largely taken, and by such means the corporations throughout the Kingdom avoided paying exorbitant interest, and saved very large sums of money,

for which little credit has been awarded them. Another factor which has ceased to have much effect was the anti-municipal trading agitation. I do not think we shall hear so much about this most interesting question for a year or two, but while the agitation lasted a strenuous attempt was made to depreciate municipal loans in the eyes of the public. So far as Glasgow is concerned, I can assure you this agitation appeared to me rather to send investors in increasing numbers direct to our city chambers, and whenever the city offered the lowest, yet fair, market rate of the time money flowed steadily in. During the darkest periods of the war it was offered more abundantly than usual, the explanation being, of course, that the rate for the moment was high in comparison with the extremely low average of the previous ten years.

A great many financial critics hold, and it is an opinion which should be seriously examined, that local authorities have been dangerously extravagant in capital expenditure, but I submit that they, and the public departments, begin at the wrong end when they endeavour to put obstacles in the way of local authorities utilising their borrowing powers in the simplest and cheapest possible way.

The proper way to prevent any municipality from wastefully spending money is for Parliament to refuse borrowing powers which are not really required for the good of the community. Once the powers are sanctioned and are being exercised, it ought to be the duty of all concerned to see that no impediment is placed in the way of even the smallest burgh to raise the loan in the simplest, most prudent, and economical manner.

As regards the repayment of debt, the Government Departments have never really faced the question of a sufficient Sinking Fund and scientific depreciation. Glasgow has always gone beyond the statutory requirements in these respects. So much attention of late has deservedly been given to the question of depreciation that the Scotch Office now shows an increasing tendency to make the provision for Sinking Fund more onerous. In fact, the officials practically admit they wish the Sinking Fund to cover depreciation as well as repayment of debt. Glasgow would prefer statutory regulations to be made (1) for sufficient Sinking Funds, (2) for adequate Depreciation, and (3) for Reserve Funds where desirable.

I append an abstract of the city of Glasgow Sinking Funds (see Appendix I.) showing that during the year ending 31st May 1905 no less than £359,389 2s. 3d. has been applied out of revenue and prices of property in reduction of borrowing powers and debt.

If the city ceased to expand, and could manage without incurring further capital expenditure (and these would not be good signs), the application, annually of the same

amount of Sinking Fund would pay off the existing debt in 42 years.

I estimate that the total capital expenditure of the Corporation of Glasgow amounted at 31st May last to—

For Reproductive Works .. ..	£15,645,159
For Unremunerative Works .. ..	7,057,162
	<u>£22,702,321</u>

#### *Accounting.*

The second branch of my subject has been most exhaustively brought before your Society by ex-Treasurer Murray and Mr. James Dalrymple, C.A., manager of the City of Glasgow Tramways, and I only propose to make some general remarks as a kind of short supplement to their able papers. Mr. Dalrymple particularly gave minute details of the tramway books and accounts, and though they may be taken to be our most advanced Trading Account they are structurally similar to most of the Departmental Accounts of the Corporation. I remember, when Mr. Dalrymple left my department to join the Tramway Department as accountant, he indicated to me his general idea of the bookkeeping system he intended to institute, particularly as regards the subsidiary books of his outside departments, and I then expressed the opinion that if he carried out his plan the Tramway Accounts would be the most thorough Tramway Accounts in this Kingdom. He carried out his ideas, with the result that practically his form has been adopted as the standard for British municipal tramway undertakings.

Glasgow long ago discarded the mere Cash Account in stating her annual accounts, and I am surprised that any local authority should desire, or be permitted, to continue such a "Penny Pass Book" method. I think every member of this Society will agree with me in holding that Municipal Accounts should set forth the revenue of the year, whether wholly actually received within the year or not, and the expenditure, whether actually paid within the year or not, and should be accompanied by a Balance Sheet showing the exact financial position of the department. Any outstanding revenue and expenditure should appear in the Balance Sheet as assets or liabilities, and in the event of arrears of assessment or rent being unrecoverable, the amounts should be written off, as is annually done in the Glasgow Assessment Accounts.

With a mere Cash Account as the approved system, it would be easily possible—for a purpose—to delay paying large items of expenditure till after the close of the financial year, and show a favourable balance as carried forward to next year. In view of the elections this might at times be of importance to outgoing Councillors. Besides, there are other ways of manipulating Cash Accounts.

It was very disappointing, therefore, to find in 1903 the Secretary for Scotland directing the accounts of certain Town Councils to be stated in Cash Account form, and not revenue and expenditure, excepting the accounts for trading undertakings—such as Gas, Electricity, and

Tramways. Of course, this regulation causes a great many of the Town Councils affected by the General Police Act to publish certain of their accounts stated in one way, and certain in another form, and it appears to me to indicate a scarcity of trained accountants at the Scotch Office, or a disbelief in their existence as municipal officers.

The question is being raised in England, as is shown by the following official intimation:—

#### *"Accounts of Local Authorities."*

The President of the Local Government Board has appointed a Departmental Committee to inquire and report with regard to—

(1) The system on which the accounts of the local authorities in England and Wales are at present kept;

(2) Generally as to the system on which the accounts of the various local authorities in England and Wales should be kept, and in particular whether such accounts should be prepared on a system requiring the entries of receipts and payments to be confined as far as possible to actual receipts and payments of money or not; and

(3) The regulations which should be made on the subject, regard being had to the necessity for showing accurately the amounts raised by local taxation and the purposes for which they are applied.

The Committee will consist of—

Mr. Walter Runciman, M.P., who will be Chairman, and of Mr. J. Bromley, C.B., Mr. T. Pitts, C.B., Mr. R. Barrow, Mr. E. P. Burd, Mr. J. J. Burnley, Mr. J. Gane, and Mr. F. Merrifield.

Mr. G. R. Snowden, of the Local Government Board, will act as Secretary to the Committee."

Four of the Committee are Government officials, likely to be wedded to old-fashioned ways, and I trust accountants will make their influence felt in favour of the adoption of Revenue and Expenditure Accounts.

At present very few of the English Corporations have Revenue and Expenditure Accounts, or show a Balance Sheet strictly relevant to the rest of the printed accounts. Consequently it is often very difficult, without making supplementary inquiries, to ascertain the exact position of the municipal funds.

The accounts of Glasgow have grown with the abnormal development of the city. Copies of the quaint accounts beginning with the year 1573, when the revenue amounted to £569 6s. 1d., Scots, will be found in the Appendices to the published volumes of the Burgh Records. I exhibit to you the original printed account for 1818 (see Appendix II.), showing that the revenue then was £15,358, and the expenditure £14,892. The Police Accounts for the same year exhibit Receipts £11,617 8s. 5½d., and Disbursements £10,341 18s. 4½d. How these figures contrast with the gross revenue of the several corporation departments for the year ending 31st May 1905—viz., £3,442,800, and the expenditure, £3,398,790!

An interesting item in the 1818 revenue is, Rents of Salmon Fishing in the Clyde, £10 10s., and in the expenditure it is curious to find:—

	£	s	d
Annual Allowance to the Lord Provost ..	40	0	0
At Fair of Glasgow, to the Deacons and others on proclaiming the Fair, and preserving peace .. .. .	46	7	0
At King's Birthday, to Magistrates, &c., in waiting to preserve peace .. .. .	10	3	6
Altogether, Entertainments cost £200 14s. 11d.			
Salary of Billet-Master .. .. .	35	0	0
Carriage of Soldiers' Baggage .. .. .	3	1	0

I do not find any reference to an audit fee, and I cannot say what form of audit the accounts were subjected to in 1818, if any, and this leads me to the important subject of the audit of public accounts.

I have here the audited accounts of the several departments of the Corporation of Glasgow for the financial year ending 31st May 1905, as printed for the information of the members of the Corporation and all others concerned, which I shall be glad to hand to your Secretary in order that any member may see for himself their style and scope. It will be found that the transactions are detailed with great fullness and frankness, and that information can be found therein which one will search for in vain in the accounts and Balance Sheets of the banks and great dividend-paying companies whose directors and representatives are so fond of criticising the financial transactions of municipalities, and, at the same time, of suggesting rules as to Sinking Funds, Depreciation, and Audit, which are very far from being followed by their companies in like circumstances.

One of the most interesting accounts is that of the Common Good. At municipal election time—indeed, mostly always—it seems the correct thing for writers of letters to the newspapers, after-dinner speakers, and municipal platform critics to allude to the Common Good as “that mysterious fund,” “that bottomless bag,” and so on. I suppose its ancient name has something to do with the alleged mysteriousness of this useful section of the corporate property of the city, but all mystery vanishes when you glance through the accounts, which will be found to be a plain record, divided under suitable headings of the financial administration of heritable and movable property of which the city has become possessed during the centuries. Out of the revenue derived from Feu Duties, Ground Annuals, Casualties, Rents, Grant from the Tramways Department, &c., a substantial part of the expense of city management is met, besides the entertainment of royalty and distinguished visitors. The possession of such a fund has proved very useful to the city in the past in financing some of our great undertakings in their initial stages, and the fund should be strengthened at every opportunity. The history of the Common Good is most interesting, and it is a pity that the necessities of their day compelled predecessors of the present Council to dispose of a large portion of the common lands once held. Place-names—such as Gushetfaulds, Ramshorn, Cribscroft, Petershill, Wester Common, Germiston, Donaldshill, Lethamhill, &c.—which appear in the

Revenue Account give some idea of the locality of those common lands.

If the members of this Society ever desire to know the full history of the Common Good, with much other matter of a most interesting kind, they should persuade Mr. Robert Renwick, Town Clerk Depute, to agree to give a paper out of his marvellous knowledge of Glasgow, obtained from the earliest known records.

The ordinary revenue of the Common Good (including tramways interest) for the past financial year was £108,521 11s. 4d., and the expenditure £81,341 11s. 1d., a surplus of £27,180 0s. 3d. The extraordinary expenditure, however, including heavy outlay for relief of the unemployed, reached £28,213 14s. 8d., causing a net deficiency of £1,033 14s. 5d. A deficiency in Revenue Account has only occurred twice since 1888. The Balance Sheet shows surplus assets £428,247 5s. 2d., without taking any credit for the tramways surplus.

The Common Good, then, is like any other property. If husbanded and nurtured it will increase in value; if neglected or squandered, it will diminish.

The Municipality of Glasgow, long before the days of Municipal Trading Commissions, and before Government Offices moved in the matter, formed sound opinions on the importance of a professional audit of the civic accounts, and appointed Chartered Accountants of the highest position in the city as auditors. I believe these auditors always performed their duties without interference, and with thorough impartiality. I particularly remember the late Mr. Main, C.A., as probably the most strict, painstaking, and thorough auditor I ever met, and he was more or less of a type. On 7th January 1904 the Corporation adopted a code of “Instructions to Auditors,” of which I submit a copy (see Appendix III.), and I think these instructions will be admitted to be more thorough and practical than the recommendations of the Municipal Trading Commission. The accounts of all public bodies should be audited by qualified professional accountants selected from those in public practice, or, if a Government audit is ever decided on, the officials should be appointed from the ranks of those who by training and examination have been found qualified by the Chartered Institutes of Accountants to audit public accounts. I am afraid, however, a Public Audit Department would find it impossible to allocate the work so as to keep the staff fully employed all the year, and yet be able to have their numerous audits finished within a reasonable time after the close of the municipal year. The Scotch Office have introduced the principle of appointing auditors whose places of business are not in the burgh whose accounts are to be audited, the implication being, I suppose, that outsiders are most likely to be more independent. I am convinced there is no advantage in this rule; but, on the contrary, it must lead to inconvenience, expense, and waste of time. If universally adopted the profession in the large cities would lose the audits with substantial fees, and be offered minor audits with minor fees, and that, I submit, would be the main result, along with the patronage involved. So far as local bias is concerned, the resident man with local knowledge is more likely to have his attention directed to weak spots (if any) in the burgh's finances than the man from a distance. The liability to pettifoggish surcharges under which many Councillors administer public funds should be done away with, and rules laid down for reasonable expenses. It is both ridiculous and unfair that County Councillors who have to drive twenty miles to an outlying district to inspect a bridge cannot spend a few shillings from the rates in sandwiches, while they can feed the horses and the hired man who drives the conveyance. I need not say that Councillors of Royal Burghs with a Common Good have more latitude in such matters.

## Appendix I.

SUMMARY OF THE SINKING FUNDS OF THE CORPORATION OF GLASGOW  
as at 31st May 1905.

DEPARTMENTS	Sinking Funds, including Prices of Property, and Accumulation to 31st May 1904			Added during Year ending 31st May 1905			Total		
	£	s	d	£	s	d	£	s	d
<b>I.—DEPARTMENTS INCLUDED IN THE PROVISIONS OF THE LOANS ACT:—</b>									
Police Department:—									
Police Account—									
Police Acts, 1866 & 1872 .. .. .	87,744	17	9	3,060	0	0	90,804	17	9
Do., 1873 & 1877 .. .. .	297,002	12	9	4,584	4	6	301,586	17	3
Municipal Act, 1879 .. .. .	58,877	14	9	2,671	4	1	61,548	18	10
Corporation and Police Act, 1882 .. .. .	61,519	0	5	3,000	0	0	64,519	0	5
Police Act, 1885 .. .. .	20,000	0	0	1,250	0	0	21,250	0	0
Do., 1890 .. .. .	9,750	0	0	750	0	0	10,500	0	0
Do., 1891 .. .. .	30,224	8	6	2,618	8	9	32,842	17	3
City of Glasgow Act, 1891 .. .. .	36,088	0	5	3,471	0	5	39,559	0	10
Corporation (General Powers) Act, 1896 .. .. .	28,918	2	9	3,750	0	0	32,668	2	9
Police Act, 1899 .. .. .	14,750	0	0	5,000	0	0	19,750	0	0
Do., 1904 .. .. .	..	..	..	2,125	0	0	2,125	0	0
Statute Labour (Act 1866) Account—									
Acts 1866 & 1872 .. .. .	186,336	2	10	6,250	0	0	192,586	2	10
Act 1885 .. .. .	13,800	0	0	1,250	0	0	15,050	0	0
City of Glasgow Act, 1891 .. .. .	15,785	4	9	2,052	10	4	17,837	15	1
Act 1893 .. .. .	3,326	15	0	589	0	0	3,915	15	0
Statute Labour (Act 1878) Account—									
Act 1885 .. .. .	115,187	1	0	7,500	0	0	122,687	1	0
City of Glasgow Act, 1891 .. .. .	14,230	12	3	1,664	7	1	15,894	19	4
Act 1893 .. .. .	26,453	9	0	5,825	11	6	32,279	0	6
Roads and Bridges (Scotland) Act, 1878—									
Dalmarnock Road Bridge .. .. .	4,653	18	9	306	7	6	4,960	6	3
Rutherglen Road Bridge .. .. .	11,349	13	2	1,148	0	6	12,497	13	8
Polmadie Road Bridge .. .. .	304	18	8	83	19	3	388	17	11
Govan Street Bridge .. .. .	704	2	5	201	10	3	905	12	8
Glasgow Bridge .. .. .	12,395	1	11	1,891	0	2	14,286	2	1
Kirklee Bridge .. .. .	1,713	6	2	413	1	7	2,126	7	9
Great Western Road Bridge .. .. .	13,922	12	8	1,036	5	4	14,958	18	0
Woodlands Road Bridge .. .. .	122	14	1	16	13	1	139	7	2
Old Dumbarton Road Bridge .. .. .	60	0	0	10	0	0	70	0	0
Cathcart Bridge .. .. .	155	6	7	62	19	2	218	5	9
Millbrae Bridge .. .. .	401	13	8	81	5	10	482	19	6
Amendment Act, 1888 .. .. .	7,834	17	11	1,845	5	2	9,680	3	1
Glasgow Building Regulations Act, 1900 .. .. .	3,253	2	7	1,609	15	7	4,862	18	2
Statute Labour—									
County Road Debts .. .. .	32,893	13	7	1,389	13	2	34,283	6	9
Sewage Purification Account (Acts 1891 to 1903) .. .. .	88,725	1	10	21,954	6	4	110,679	8	2
Sanitary or Public Health Account .. .. .	227,346	7	11	27,865	10	3	255,211	18	2
Waterworks Department .. .. .	1,425,830	14	1	117,326	19	10	1,543,157	13	11
Gas Department .. .. .	1,150,594	13	8	51,471	11	5	1,202,066	5	1
Electricity Department .. .. .	375,561	8	4	20,584	0	5	396,145	8	9
Markets and Slaughter Houses Department .. .. .	66,381	16	0	17,286	2	2	83,667	18	2
Public Parks Department .. .. .	51,879	16	9	3,308	17	3	55,188	14	0
City Improvements Department (Acts 1866, &c.) .. .. .	305,722	12	4	11,591	17	1	317,314	9	5
Do. do. (Acts 1897, &c.) .. .. .	360,816	17	6	19,681	0	8	380,497	18	2
Municipal Buildings Department .. .. .	30,782	6	1	13,590	19	6	44,373	5	7
Corporation Act, 1890 (Clyde Embankments) .. .. .	50,182	19	0	7,093	16	10	57,276	15	10
Corporation (City of Glasgow Act, 1891) .. .. .	13,274	0	0	1,755	0	0	15,029	0	0
Diseases of Animals Acts .. .. .	10,917	10	0	992	10	0	11,910	0	0
Corporation and Police Act, 1882 (Prison Payment) .. .. .	97,808	15	10	666	12	2	98,475	8	0
Telephone Department (Telegraph Act, 1899) .. .. .	30,706	4	6	2,266	4	7	32,972	9	1
Public Libraries Department .. .. .	16,110	0	0	10,063	6	8	26,163	6	8
Girgenti Inebriates' Home (Inebriates' Amendment (Scotland) Act, 1900) .. .. .	551	17	7	400	0	0	951	17	7
	718	1	2	733	6	8	1,451	7	10
	3,987,839	12	10	278,802	5	3	4,266,641	18	1
Add Gas Sinking Fund invested in Sundry Securities not yet applied in Redemption of Debt .. .. .	13,714	7	8	15,857	6	6	29,571	14	2
Add Gas Sinking Fund applied in Redemption of Gas Annuities, cancelled for extinction .. .. .	113,314	4	5	8,465	15	9	121,780	0	2
	4,114,868	4	11	303,125	7	6	4,417,993	12	5
<b>II.—SINKING FUNDS NOT REQUIRED TO BE PAID INTO THE LOANS FUND APPLIED DEPARTMENTALLY:—</b>									
Waterworks Annuities and Funded Debt .. .. .	125,162	3	8	9,344	6	0	134,506	9	8
Tramways .. .. .	402,355	6	5	46,919	8	9	449,274	15	2
	£4,642,385	15	0	£359,389	2	3	£5,001,774	17	3



## Appendix II.

ABSTRACT STATEMENT of the REVENUE and EXPENDITURE  
of the CORPORATION of the CITY of GLASGOW, for the  
Year ending 31st December 1818.

## REVENUE.

	£	s	d
Feu Duties and Ground Annuals .. .. .	4,414	19	6
Feudal Casualties .. .. .	38	13	6
Rents of Seats in the Established Churches .. .. .	3,227	5	10
Lands .. .. .	568	1	11
Houses, Shops, and Warehouses .. .. .	532	0	0
Mills, and Lands annexed .. .. .	824	4	0
Salmon Fishing in the Clyde .. .. .	10	10	0
and Dues of Tron and Weigh House .. .. .	100	0	0
Markets and Slaughter House .. .. .	1,169	10	0
Washing House .. .. .	470	0	0
Dues for Pasturage of Cows in the Green .. .. .	442	12	0
Shore of Port Glasgow, commuted at .. .. .	20	0	0
of Ladies and Maltures .. .. .	1,823	0	0
Quarries .. .. .	40	0	0
Net Proceeds of Impost on Ale and Beer .. .. .	1,149	6	4
Freedom Fines and Burgess Tickets .. .. .	188	4	0
Dividends on Stock of Ten Shares in the Forth and Clyde Navigation .. .. .	250	0	0
Twenty do. in the Glasgow Water Company .. .. .	90	0	0
Total Revenue .. .. .	£15,358	7	1

## EXPENDITURE.

## ECCLESIASTICAL DEPARTMENT.

	£	s	d	£	s	d
Stipends to Seven Established Clergymen of the City—£400 each .. .. .	2,800	0	0			
Communion Elements .. .. .	225	1	4			
Salaries to Eight Precentors .. .. .	116	5	4			
Allowances to Beadles and Bellingrings .. .. .	56	15	8			
Salary to the Keeper of the Public Clocks, 12 year, till 1st November 1818 .. .. .	43	15	0			
Repairs and Furnishings for the Churches, Steeple, and Clocks .. .. .	277	17	10			
Cleaning the Churches .. .. .	43	1	6			
Insurance of Do. from Fire .. .. .	40	5	0			
				3,603	1	8

## CIVIL DEPARTMENT.

Annual Allowance to the Lord Provost .. .. .	40	0	0
Salary to City Chamberlain, £100— and Allow- ance for a Clerk, £30 .. .. .	130	0	0
Superintendent of Public Works, including a Clerk .. .. .	300	0	0
Do.'s Foreman .. .. .	31	1	0
Council Officer and Chamber Keeper .. .. .	90	0	0
City Surveyor .. .. .	50	0	0
Music Bell Player .. .. .	30	0	0
13 Town Officers, 2 Gorbals, 1 Provost and 1 Water Officers .. .. .	55	1	6
Clothing for Officers .. .. .	163	16	0
Pensions to Superannuated Officers .. .. .	32	5	0
Annual Allowance to Extractor of Court, and Under Clerks in Public Offices .. .. .	23	0	0
Contribution to the Town's Hospital .. .. .	220	0	0
Allowance to Lying-in Hospital .. .. .	10	0	0
Funeral Charges of Paupers sent to Infirmary by the Magistrates .. .. .	3	2	0
Insurance, Repairs, and Furnishings for Court House, Town Hall, and Public Offices .. .. .	105	6	0
Stationery, Printing, and Advertisements .. .. .	204	16	9
Coal and Candles .. .. .	36	18	11
Standard Measures for the Dean of Guild Court Law Expenses and Writer Business in Edinburgh .. .. .	107	17	0
Conveyancing and Writing Business in Glasgow Stamps for Conveyancing .. .. .	89	9	6
Repairs, Insurance, and Furnishings for Houses, Shops, Markets, Slaughter House, Washing House, Weigh House, Mills, and other Public Property .. .. .	313	12	1
Improvements, and making Roads in the Public Green, including Allowance to Ranger .. .. .	191	15	10
Feus, Tiends, Rents, Cess, Mails, &c., payable on the Burgh Property .. .. .	453	17	0
Arrears of Property Tax .. .. .	12	3	0
Expense of Fitting up the Market in Candleriggs Street, substituted for the Tron and Weigh House, and the Poultry, Butter, Egg, Cheese, and Meal Markets .. .. .	1,262	13	6

## Entertainments, viz. :—

	£	s	d	£	s	d
At Fair of Glasgow, to the Deacons and others, on proclaiming the Fair, and preserving peace .. .. .	£46	7	0			
At King's Birthday, to Magistrates, &c., in waiting to preserve peace .. .. .	10	3	6			
At Installation of the Gorbals Baillies, given by the City as Superior of the Barony .. .. .	29	9	0			
At Meetings of Shotts Road Trus- tees, to save expense of Meeting at Hamilton .. .. .	28	5	0			
At Election of Magistrates and Town Council .. .. .	57	2	0			
At Sundry Meetings of the Magis- trates and Committees, on Public Business .. .. .	24	3	5			
At Rouping of the Town's Common Good, Allowance to Bidders .. .. .	5	5	0			
Expense of attending the Convention of Royal Burghs, by the Commissioner and his Assessor, including Entertainments in Edinburgh .. .. .	20	3	6			
Missive Dues, imposed by the Convention for relief of Poor Burghs .. .. .	327	0	0			
Sweeping Pavements at Court House, &c., and collecting the Slaughter House Dung .. .. .	59	3	4			
Incidental Expenditure, including Auctioneering, Stamps, &c. .. .. .	181	14	8			
				4,784	3	6

## ESTABLISHMENT FOR PUBLIC EDUCATION.

Salaries to the Rector and Masters of the Grammar School .. .. .	210	0	0
Books Distributed as Prizes to Scholars at the Annual Examination .. .. .	117	17	11
Books of Reference, &c., for the use of the School .. .. .	1	18	6
Entertainment to the Examinators and Masters .. .. .	18	17	3
Insurance and Repairs on the School House; Cleaning Windows, Chimneys, &c. .. .. .	32	4	4
Wages to Servant for Cleaning the School Rooms .. .. .	5	0	0
			<hr/>
			385 18 0

## MILITARY DEPARTMENT.

Salary of Billet Master .. .. .	35	0	0
Carriage of Soldiers' Baggage .. .. .	3	1	0
Stationery .. .. .	5	2	6
Coal and Candles for Guard Houses, with other Incidental Expenditure .. .. .	47	18	8
			91 2 2

## POLICE ESTABLISHMENT.

Contribution for Lighting and Cleaning the Streets, by authority of Act of Parliament ..	800	0	0
Expense of Constables, &c., keeping the peace at Fair of Glasgow, King's Birthday, and other occasions, including Surgeon's Fee for a person wounded in an affray, Batons for Constables, &c.	209	4	10

## GENERAL CRIMINAL DEPARTMENT.

Salary to Procurator Fiscal, with allowance for Services and Clerk .. .. .	19	16	8
Three Criminal Officers, and occasional Supernumeraries .. .. .	133	6	10
Clothing for Three Criminal Officers .. .. .	25	8	6
Criminal Prosecutions before the Magistrates, and Precognitions, with a view to trial before the Justiciary Court (after deducting Fines and Expenses recovered) .. .. .	72	0	7
Justiciary Court. Incidental Expenditure, including Entertainments to the Court at the Spring and Autumn Circuits .. .. .	258	8	0
Salary to the Jailor, his Clerk and Servants (including allowance at death of late Jailor) .. .. .	166	13	9
Proportion of Surgeon's Salary, Surgeons' Fees for inspecting dead bodies supposed murdered, and Medical Assistance to Jail prisoners, in cases of emergency .. .. .	30	9	6
Refreshment to Prisoners and Jail Servants, at New Year's Day and King's Birthday .. .. .	6	8	11
Aliment to Jail Prisoners accused of Crimes .. .. .	335	6	6
Salary and Allowances to the Public Executioner, £59 9s.; Expenses attending Executions, £50 6s. 2d. .. .. .	109	15	2
Advertisements, and other Incidental Expenditure .. .. .	15	17	6
Stationery for Offices, Jail, and Justiciary Court .. .. .	41	3	6
Coal and Candle .. .. .	21	0	0
Travelling Expenses, with sundry Prisoners accused of Crimes .. .. .	16	13	6
Repairs and Furnishings for the Jail, including Bedding, &c. .. .. .	438	8	0
	1,690	16	11
Deduct Expenses recovered from the Sheriff of Lanarkshire, for removal of Female Convicts in 1817 .. .. .	55	0	0
	1,635	16	11

BRIDWELL DEPARTMENT.

Salary to Chaplain .. .. .	30	0	0
Precentor and Teacher .. .. .	10	0	0
Surgeon for one year .. .. .	10	0	0
Keeper .. .. .	200	0	0
Wages to Under-keeper and Servants .. .. .	155	0	0
Repairs and Furnishings for the Establishment, including Provisions, &c., after deducting the prisoners' earnings .. .. .	161	9	3
Stationery .. .. .	10	8	5
		576	17 8

FINANCE DEPARTMENT.

Interest on the Debts owing by the Corporation .. .. .	£4,951	8	10
Deduct ditto, on the Debts owing to the Corporation .. .. .	2,418	16	2
	2,532	12	8
Mortifications, being Interest on sundry Sums bequeathed by individuals for special Charitable Purposes, Bursaries, &c. .. .. .	208	16	11
Annuities on Money sunk upon Lives, in hands of the Corporation .. .. .	65	0	0
	2,806	9	7
Total Expenditure .. .. .	14,892	14	4
Surplus of Income .. .. .	465	12	9
	£15,358	7	1

Besides the preceding Articles of Expenditure, the sum of £6,473 12s. 10d. has been laid out, in the course of this and the last year, in the erection of St. John's Church; and the farther sum of £3,526 7s. 2d. has been allotted in the Suspense Account, towards the completion of that Church. The sum of £2,109 7s. has also been expended in the formation and erection of the Live Cattle Market and Pertinents. These sums may be considered as deductions from capital, or as so much capital sunk for the benefit of the public.

Appendix III.

CORPORATION OF GLASGOW.

INSTRUCTIONS TO AUDITORS.

(As adopted by the Corporation on 7th January 1904.)

1. The audit shall, as far as possible, be continuous, the books and accounts being audited at least every quarter.
2. The auditor shall make himself acquainted with all Acts affecting the departments whose books and accounts he has been appointed to audit.
3. The auditor shall satisfy himself as to the accuracy of the books and accounts, and shall see that all the transactions are correctly recorded.
4. The auditor shall go carefully into the nature of all items of expenditure, so that he may be satisfied that these are correctly allocated as between capital and revenue.
5. The auditor shall satisfy himself, by reference to the Acts of Parliament or otherwise, as to the legality of all items of expenditure.
6. The auditor shall see that Parliamentary powers have been obtained for all sums borrowed for capital purposes.
7. The auditor shall satisfy himself that the provisions regarding Sinking Funds are being strictly complied with.
8. The auditor shall not pass any payment unless the same has been authorised either (a) by a minute approved by the Corporation or (b) by the responsible Committee, the amount of the payment being in the one case shown in the minute, or in the other case the account or statement duly initialled by the proper official or officials and by a member or members of the Committee. The auditor shall see that said accounts or statements are stamped with a rubber or other stamp giving the name of the Committee, the date of the meeting, and providing space for the

requisite initials of the member or members of Committee.

9. The auditor shall, as far as possible, assure himself that all the revenue and expenditure for the year under review has been brought into the annual accounts.

10. The auditor shall see that all sums due to the Corporation—such as Assessments, Rents, Feu-Duties, Duplications, Feudal Casualties, Accounts for Materials Sold, &c.—are accounted for, and shall satisfy himself that all sums written off as irrecoverable or as abatements have been so dealt with by authority of the responsible Committee.

11. On the completion of his audit the auditor shall, if satisfied, certify that the annual accounts and Balance Sheet are correctly stated, duly vouched, and exhibit the true position of the undertaking.

12. Unless expressed otherwise, the auditor's docquet shall be understood to imply that this code of instructions has been carried out.

*Auditor's Special Report.*

The auditor shall, whenever he thinks necessary, in addition to his docquet, make a special report to the Corporation. This report, which shall be printed in the minutes for the information of the Corporation, may deal with such matters as the following:—

- (a) The method of bookkeeping, both in regard to the general and subsidiary books, whether the books are properly kept and are the most suitable for the undertaking.
- (b) In regard to the subsidiary books, as to the method of internal check which is in operation, and whether he considers such check complete and satisfactory.
- (c) The position of the borrowing powers and Sinking Funds.
- (d) Whether the expenditure on capital during the year has been authorised by the Corporation.
- (e) Any items of expenditure which he may consider illegal.
- (f) Whether in his opinion it is necessary or expedient to charge revenue with sums to institute a Reserve Fund, or to provide for depreciation or obsolescence of plant, and to report as to the sufficiency or insufficiency of sums which may have been so charged, having regard to the payments made on account of Sinking Fund.

The auditors shall be appointed during the pleasure of the Corporation, subject to the proviso that no auditor shall be liable to be deprived by the Corporation of his office within five years of the date of his appointment, except with the consent of two-thirds of the members present at a meeting of the Corporation called for the purpose.

On the expiry of five years no auditor shall be eligible for immediate reappointment to the same office, except with the consent of two-thirds of the members present at the meeting of the Corporation.

JAMES G. MUNRO,  
Digitized by Town Clerk.

**Personal.**

The firm of George E. Dall & Dilly, C.A., 30 St. Andrew Square, Edinburgh, of which George E. Dall, F.S.A.A., and William Dilly, C.A., were sole partners, has been dissolved. Mr. Dall will continue the business at 30 St. Andrew Square, Edinburgh, on his own account.

Mr. William Gilchrist, C.A., has been assumed as a partner of the firm of John E. Watson & Son, C.A., 149 St. Vincent Street, Glasgow. Mr. Gilchrist has been associated with the firm as managing clerk for the past twelve years. The business will continue to be conducted under the firm-name of John E. Watson & Son.

Mr. Henry Lessels, C.A., has begun the practice of his profession at 37 George Street, Edinburgh.

The prizes awarded in connection with the examination on Professor Nicholson's lectures on "Public Finance" have been awarded as follows:—

**Edinburgh Accountants—**

Keith W. Drennan (Messrs. William Home Cook & Co.), 42 Castle Street, Edinburgh.

**Glasgow Accountants—**

Gilbert McVean (Messrs. Bannatyne & Guthrie), 191 West George Street, Glasgow.

**A New System of Account Books.**

"TIME is money" is the old maxim of our commercial life. Typewriter, telephone, various practical arrangements as to classifying and arranging letters and other business papers, have been adopted long ago in our offices to simplify our work and help the business man to get through his daily routine with more expediency and accuracy, but little attention has been directed to modifying our old modes of book-keeping. The ever-pushing German, however, has had his eyes open in this direction. Mr. Schumacher, an official of the Law Courts of Strassburg, has in the course of his work in commercial cases, which entailed a great deal of adding up figures, developed an idea which, without interfering with any system of bookkeeping in itself, not only saves the carrying forward of the totals from page to page, thereby eliminating the swelling of the figures, but which also guarantees a greater safeguard against errors which frequently occur through carrying forward the amounts. The checking of accounts is considerably facilitated by this new system, the number of figures being reduced to about 200-300 against 1,000 of the present system, whereby greater accuracy is secured.

According to careful practical tests, a saving of at least 40 per cent. in time has been established. The advantages are thus obvious, and it is to be hoped that we shall not be slow to take up the system, which will prove of great value where large accounts are to be dealt with, such as in banks, factories, railways, clearing-houses, &c.

Mr. Schumacher has patented his idea, and the patents have already been disposed of in Germany and Belgium. The Alsace-Lorraine State Railways, the Octroi Authorities

of Strassburg, many banks and industrial concerns, have adopted this system and testified to its great advantages, and in this country it has been examined and very highly thought of by some leading Chartered and Incorporated Accountants.

ADELPHI THEATRE.—"Measure for Measure" with Mr. Oscar Asche and Miss Lily Brayton taking the leading parts, still continues to draw crowded houses to the Adelphi. The piece is admirably staged, and, we think, will have a long and successful run.

**Bank Rate of Discount.**

April 14th 1904	..	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	..	3½%

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS  
AND  
ACCOUNTANCY THROUGHOUT THE WORLD.

VOL. XXXIV.—NEW SERIES.—No. 1637.]

SATURDAY, APRIL 21, 1906.

[PRICE 6d.]

Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

*Licensed Houses* present some rather special features. The goodwill attaching to the license gives the lease or freehold of licensed premises a market value greatly in excess of their real value as buildings. To be properly considered, the value of the premises and the license must be separated. The former should be depreciated in the usual way, leaving the license alone to be considered. A license on freehold premises does not depreciate, but a license on leasehold premises passes away with the premises and must therefore be depreciated like a lease. A license may at any time be lost—either for misconduct or for no reason—but this is a contingency outside the scope of depreciation. It may, however, be provided against by Insurance, which would appear to be a most prudent course to adopt.

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in England and Wales.**

## EXAMINATIONS.

THE next Examinations will be held on the following dates:—

The Preliminary Examination on the 12th, 13th, and 14th June 1906.

The Intermediate Examination on the 22nd and 23rd May 1906.

The Final Examination on the 29th, 30th, and 31st May 1906.

Persons desiring to present themselves for examination must give notice to the Council at least thirty days before the date of the Examinations, at the same time forwarding the examination fee.

Full particulars and forms may be obtained at the office of the Institute, Moorgate Place, London, E.C., and at the various Branch Libraries.

By order of the Council,

GEORGE COLVILLE,

Secretary.

April 1906.

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**Leading Articles.**

**Informal Deeds of Arrangement.**

AS bearing somewhat upon the subject of informal deeds of arrangement with creditors, which has recently been discussed in these columns, a recent decision of his Honour Judge SHAND in the Liverpool County Court, in the case of *Jones v. Lewis; W. J. Glass, Garnishee*, will be found of interest.

This was a case in which the plaintiff, having obtained judgment against the defendant on the 24th January last, and the defendant being at that time pressed by his creditors, had instructed Mr. W. J. GLASS, A.C.A., to call a meeting of his creditors, which was accordingly held on the 29th January. At that meeting it was resolved that Mr. GLASS should collect the books debts, and that in addition the defendant should pay to him 5s. a week to accumulate until sufficient moneys were in hand to make it worth while for a dividend to be paid to creditors generally. It was further resolved, apparently, that in view of the smallness of the estate and the expense that would be thereby involved, no deed of arrangement should be taken. It appears that certain book debts were accordingly collected by Mr. GLASS, but that, owing, it was alleged, to the illness of the debtor's wife, he had been unable to obtain any payment in respect of the 5s. a week; whereupon the plaintiff commenced the present proceedings to endeavour to attach the moneys then in the hands of Mr. GLASS on the ground that the terms of the creditors' resolution not having been carried out owing to the non-payment of the 5s. per week, the conditions had been broken, and that the moneys in Mr. GLASS's hands belonged to the defendant, and were liable to attachment.

On behalf of the garnishee it was argued that as there was a trust in favour of the creditors which had been in no way put an end to by the default of the defendant the moneys in question were not attachable, and his Honour upheld this contention, giving judgment in favour of the garnishee, with costs. There are a number of issues in connection with this decision which are of interest, and which, it seems to us, are all more or less open

to discussion. In the first place it is held, in spite of the provisions of the Deeds of Arrangement Act, 1887, that there may be a valid assignment of a debtor's assets for the benefit of his creditors without any registration of such assignment under the terms of the Act. If this really be the effect of his Honour's finding, and it be good law, it is a little difficult to see what is gained by registration of such deeds. It is important to bear in mind, however, that in this case—owing to the smallness of the amounts involved—the plaintiff was unable to pursue whatever remedy he might have by way of bankruptcy proceedings. Another aspect of the matter which does not appear to have been very fully brought out was that, apparently, the plaintiff had in the first instance assented to the arrangement; yet the question does not seem to have been so much as raised as to whether he was not by such assent estopped from afterwards seeking to secure an attachment in his favour which would give him an advantage over the general body of creditors. There can be little doubt that on the facts, as reported, the plaintiff would not have been able to succeed in obtaining a receiving order even if his debt had been sufficiently large to justify a bankruptcy petition. Very possibly, of course, this aspect of the matter was not raised because the existence of the continuing trust rendered its determination unnecessary, but what is the really unsatisfactory feature of the case is that, apparently, a debtor, having made an arrangement with his creditors upon such terms as this, is at liberty to please himself entirely as to whether he subsequently carries it out or not, and in the event of his deciding not to do so there would appear to be no very effective means of

bringing pressure to bear. Of course, in the case of quite small estates, it is practically impossible to provide such machinery save at a cost out of all proportion to the benefits resulting, but if only on account of its moral effect it would seem to be desirable that some such power should exist. Apparently in a case like this the creditors, having once assented to an arrangement, are thereafter estopped from taking proceedings against the debtor, even although he may not carry out his part of the bargain; and, of course, in this connection it can make no legal difference whether the debtor's default be due to inability or disinclination.

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#### **The Association of Chambers of Commerce of the United Kingdom.**

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THE forty-sixth annual meeting of the Association of Chambers of Commerce of the United Kingdom was held in the Whitehall Rooms of the Hotel Métropole last month, under the presidency of Sir WILLIAM H. HOLLAND, M.P. The President's address contained references to the pending inquiry into the working of the Companies Acts, and the promised appointment of a Departmental Committee to deal with the bankruptcy laws, but contained nothing else of any special note.

On the motion of Mr. R. C. MILLAR, of Edinburgh, a resolution was passed, anent the report of the Departmental Committee upon Income Tax dated last June, deprecating the suggested abolition of assessment by average, and favouring the retention of the relief afforded under Section 133 of the 1842 Act, as amended and applied in practice, as being a reasonable concession in cases of decreasing

and fluctuating incomes. This resolution is, however, upon the face of it inconsistent, in that if fluctuating incomes are, entitled to special treatment in bad years it would appear to logically follow that the Revenue—and thus indirectly the remainder of the income-tax paying community—should be entitled to recoup themselves by means of additional assessments in good years, which is, of course, in direct contradiction to the principle of the average. Our own impression is that it would be simpler in every way if all persons assessable under Schedule "D" were to be called upon to pay income-tax according to their earnings in the last preceding year. The only possible objection is, of course, the difficulty that the Treasury would experience in arriving at a reliable estimate of the income-tax to be levied from year to year. This, however, might be overcome by allowing any surplus realised on the collection of tax in excess of the estimate to be carried forward to the credit of the next year, instead of being automatically applied to other purposes.

On the motion of Mr. J. R. ELDRIDGE, of Wakefield, a resolution was passed in favour of the extension of the jurisdiction of County Courts to £500, avowedly in consequence of the satisfactory results attending the extension of jurisdiction created by the County Courts Act of 1903. We entirely agree that the magnitude of the sum involved constitutes of itself no reason why the machinery of the High Court should be taxed, and juries of Londoners should be called upon, to adjudicate upon disputes arising all over the kingdom. It is, however, difficult to set up any standard other than the pecuniary amount at stake; and it certainly seems a distinct hardship to litigants that

really complicated cases should of necessity be referred in the first instance to Courts presided over by men of inferior attainments to those possessed by High Court Judges. It may, moreover, be pointed out that County Court fees are *pro rata* far higher than High Court fees. So long as the amounts involved are small, this discrepancy can, of course, be readily explained, and is indeed inevitable, but if County Courts are going to adjudicate upon substantial sums, one of the first reforms necessary would be a reduction in their fees where these larger amounts are involved.

Another resolution which we may mention in passing was that carried upon the motion of Mr. F. J. ROBJENT, to the effect that it is desirable that local facilities for stamping documents should be more widely extended. We are in entire sympathy with this proposal, but it seems to us that it merely touches the fringe of a much wider and more important matter—namely, the facility with which fraudulent documents may be concocted owing to the existing regulations as to the stamping of documents. We may, of course, leave out of account the possibility of a stamp being forged, so to speak, *en bloc*, as the risks of discovery in such a case are enormously enhanced by the necessary collusion; but, as matters stand at present, there is absolutely nothing to prevent the sale of stamps in the first instance legitimately affixed to plain paper when those stamps are so out of date as to enable them to bolster up ante-dated documents. Moreover, most deeds of importance are engrossed upon parchment, and, as our readers will hardly require to be reminded, in such cases the stamp is not affixed to the parchment itself, but to a slip of loose paper attached to the parchment in such a

manner that with a little care there would be no serious difficulty in detaching it and affixing it to another document. On the grounds alike of the undoubted loss to the Revenue arising from this facility for the removal of expensive stamps and of the facilities thus afforded for the creation of bogus ante-dated documents—such as settlements, bills of sale, and the like—this ridiculously unbusinesslike method of attaching stamps to parchments should undoubtedly be discontinued. In the first instance it no doubt owed its origin to the difficulty of getting parchment to take the colour of the stamp, but in these days that difficulty ought surely not to prove insuperable, more especially bearing in mind the fact that real parchment has practically fallen into disuse. No doubt, if attention were given to the matter, a host of practicable remedies could be discovered within a very short space, but it occurs to us off-hand to suggest that certainly one of the most valuable would be that for the future all documents should be stamped so that half the stamp is upon the parchment itself and half upon the inserted paper slip. The difficulties of fraudulently inserting a paper slip so as to make a new document appear like an old one regularly stamped at the proper time would then be practically insuperable. The question is one of particular interest to our readers, inasmuch as there can be little doubt that marriage settlements and bills of sale are sometimes concocted on the eve of bankruptcy with the object of defrauding creditors.

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#### The Treatment of Dual Currencies in Accounts.

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FROM time to time the subject of foreign exchanges has received attention in these columns, both editorially and at the hands of

lecturers at students' meetings, and the proper treatment in accounts of foreign currencies and of the effects produced by their fluctuating exchange value has also been considered from several points of view. Little, however, has yet been written upon the subject of the accounts that must necessarily be kept by the resident in a country where there is an inconvertible paper currency, and where therefore transactions, even if quite unconnected with the foreign trade, have from time to time to be recorded in one or other of two distinct mediums of exchange—that is to say, either upon the gold basis or the currency basis. We cannot help thinking that accountants and bookkeepers residing in a country like our own hardly sufficiently appreciate how enormously their work is simplified as compared with the problems which are presented to their professional brethren, say in Argentina or Chili. They are from time to time called upon to deal in accounts with transactions taking place abroad, and therefore in the currency of a foreign country, and it is to be feared that too often their treatment is unscientific and is only saved from hopeless confusion by the comparative rarity of these transactions. To be called upon to deal simultaneously with transactions in two distinct currencies whose relative values are continually fluctuating is a task that would undoubtedly be entirely beyond the capacity of the average bookkeeper, and would probably tax the ingenuity of many accountants who have not previously had occasion to consider the problem. Yet as a matter of fact, when systematically dealt with, the difficulties of the situation, if they do not altogether vanish, at least are capable of being overcome without any serious difficulty, and without any very

appreciable addition to the clerical labour involved.

The first point to be decided in such a matter is as to whether the gold or the currency basis is to be regarded as the basis of the accounts themselves. And upon this point it seems to us that everything is in favour of adopting the former, even when establishing a system of accounts for a new business; while in connection with a business that has already been in existence for some time the arguments in favour of the gold basis would, if anything, be strengthened. Without going fully into the matter, or attempting to deal with it otherwise than for the purposes of explaining the problem now before us, it may be pointed out that the position obtaining is virtually that at one time or another the Governments of those countries possessing an inconvertible paper currency have passed a law that debtors should thereafter be entitled to pay their debts in paper money which was inconvertible, and that no creditor could insist upon being paid in gold. The effect of such a device was, of course, to legalise the robbery of those existing creditors for the benefit of then existing debtors. So far as subsequent transactions are concerned the position of the community cannot by any possibility be improved by such artificial means, save that a limited number of persons more astute or more far-seeing than the rest may from time to time be able to secure profits on exchange at the expense of others. These side issues are, however, outside the scope of the present discussion, and we only mention the matter by way of showing that the gold basis is, and must be, the only basis for the record of transactions, and that the enactment that debts may be paid in



inconvertible paper—or in currency, as it is commonly called—does not disturb that basis, inasmuch as, save with regard to those transactions uncompleted at the date when the law was enacted, prices would naturally be advanced *pro ratâ* according to the exchange value of the paper currency.

The gold basis having been thus determined upon for the books of account, it only remains to point out that, whenever sales are effected payable in currency, what may be called the gold price is loaded with the difference. The customers' accounts in the Sold Ledger would be debited with the loaded price, while Sales Account would be credited with the net or gold price (in total, of course), and the loading credited to Exchange Account. Purchases would be dealt with upon converse lines, so that the Trading Account will be kept, and the gross profit arrived at, upon the gold basis. For Balance Sheet purposes the Bought and Sold Ledger balances, being at currency values, would, of course, require to be reduced to gold values by making a reserve sufficient to cover the difference in exchange on the date of the Balance Sheet. So far as it goes, the balance on the Exchange Account would provide a Reserve for contingencies, but if insufficient for that purpose the difference must, of course, be charged to Profit and Loss in the current period. Nominal Accounts would for the most part be operated upon on the currency basis, but salaries paid to Europeans would probably be payable in gold. Transactions upon the gold basis might be dealt with in distinct Ledger Accounts, but would probably in practice be carried through upon payment of currency, the quantity of such currency being determined by the rate of exchange then

ruling; and this plan would, of course, have the merit of reducing the number of Ledger Accounts involved. When closing up the Nominal Accounts and compiling the Profit and Loss Account the balance of each such account would be reduced from the currency to the gold basis, the difference being credited or debited to Exchange Account, as the case may be. But, for the purposes of converting Nominal Accounts, the average rate of exchange during the period under review should be taken. The balance shown by the Profit and Loss Account as being the net profit is then the net profit in gold, and the Balance Sheet items will be all upon the gold basis, in that the only items recorded in the books in currency will have been duly reserved against so as to reduce them to their gold equivalent. Upon this plan there will necessarily be some slight difference in exchange caused by the fact that, whatever rate be employed for the conversion of the Nominal Accounts, it can in point of fact never be expected to really represent the average of the rate experienced by that particular undertaking. But with care the difference can be reduced to a minimum, and the system presents the advantage of enabling a series of Profit and Loss Accounts to be compiled upon a uniform basis, which thus permits of their being employed for comparative purposes.

It is important, however, to bear in mind that, so far as internal trade is concerned, prices do not at once move to compensate for fluctuations in exchange; and consequently for some purposes a comparison of Profit and Loss Accounts upon a gold basis may be less useful than a comparison upon the currency basis, in which the majority of the transactions

actually took place. This defect can, however, of course be readily got over by compiling a duplicate Profit and Loss Account in currency; which latter, however, will of course form no part of the bookkeeping proper, and therefore introduces no additional complications in the keeping of accounts.

We understand that in some cases the attempt has been made to deal with this problem by the employment of double column books for gold and currency respectively. Such an arrangement must of necessity add enormously to the clerical labour, and it seems to us that it produces no corresponding advantage. It is impossible for the proprietor of a business to seriously attempt to measure some of his transactions by one standard and some by another, and still more impossible for him to arrive at any intelligible idea of his present position upon the basis that that position is made up of two essentially distinct sets of affairs which are inconvertible in terms. In this sense the term "inconvertible" is undoubtedly misleading, for although a debtor may have the right to pay in currency, the recipient of that currency is entitled to buy therewith as much gold as he is able to obtain. It must, moreover, be borne in mind that—at all events, so far as British traders in South America are concerned—no really just view of the whole of the facts can be obtained unless the business be regarded as a more or less temporary one, and the ultimate standard of value is the eventual sale of that business as a going concern and the remittance of its proprietors' capital back again to Europe. That, we think it may fairly be stated, is the ultimate aim with which practically all British traders engage in trade in

South America, and its bearing upon the accounts ought not to be overlooked, more especially when its effect is to simplify rather than complicate the methods of accounting.

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### Some Legal Terms.—VI.

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#### The Courts of Law.—The Criminal Courts.

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BY OUR LEGAL CONTRIBUTOR.

IN this article I propose to deal rather with the machinery whereby the law is administered than with the law itself—in other words, to give a slight sketch of our various Courts of Justice.

In a previous article it may be remembered that I classified legal wrongs into torts and crimes, and it will be found, as one might naturally suppose, that the Courts in which such wrongs are redressed are fundamentally classified on the same principle. In other words, if damages or restitution are sought from a wrongdoer or the injury is regarded as a "tort," such restitution or damages must be sought in a "Civil" Court; whereas, if the demand be for punishment, as for a "crime," a "Criminal" Court must be resorted to.

We start, then, with this fundamental division of our Courts into "Civil" and "Criminal," but it must be carefully borne in mind that this division does not precisely square with that of wrongs into crimes and torts, inasmuch as both breaches of contract as well as torts are redressed in a "Civil" Court.

I propose to first consider "Criminal" Courts, and in so doing we shall, I think, be assisted if we again subdivide crimes into the two groups of indictable and non-indictable offences to which I have before alluded. The Courts for the trial of non-indictable offences are the Petty Sessions Courts, and the Police Courts in the case of the Metropolis and some other large towns. Every county has its Petty Sessions, but in some instances there are separate Borough Sessions where a borough has a commission of the peace distinct

from that of its county. The Judges in these Courts are, in the case of Petty Sessions, the Justices of the Peace for the county or the borough, as the case may be, and in the Police Courts a Stipendiary, or paid Magistrate, appointed by the Crown on the advice of the Home Secretary. Trials at Petty Sessions must in most cases take place before two Justices, but where the proceedings are merely taken with a view to seeing whether there is sufficient evidence for committing an accused for trial for an indictable offence, the presence of one Justice is sufficient. Of course, in the case of a Stipendiary sitting in a Police Court the proceedings, of whatever nature, take place before him alone.

The next Criminal Court in the ascending scale is that of "Quarter Sessions," and these, too, may be either for a county or a borough. These Sessions, which try indictable offences, are held four times a year, the Judges being, in the case of County Sessions, the Justices for the county presided over by a chairman elected by them, in that of a borough a single Judge, styled a "Recorder," appointed by the Crown.

We next come to the "Assize" Courts. These are held periodically at what are called "Assize" towns, being the more important centres on the "Circuits," or those districts into which the whole county is mapped out for the purpose of the local administration of justice therein by the High Court.

At the "Assizes" are tried all such indictable offences as are either not triable at Quarter Sessions or which, although triable thereat, have not in fact been so disposed of owing to the circumstance of the accused having been committed for trial since the sitting of the last Quarter Sessions. The presiding Judge is generally one of the High Court Judges, though sometimes he is a barrister specially commissioned, and known as a "Commissioner of Assize."

For Middlesex and the suburbs of the Metropolis, in Kent, Surrey, and Essex there is a special

Criminal Court known as the "Central Criminal Court," which is held every month, and sits at the Old Bailey. The Judges who actually preside in that Court are the Recorder of London, the Common Sergeant, and in turn one of the High Court Judges, who takes murders, manslaughter, and a few other more serious crimes not triable by the others.

In what I have been saying I have only dealt with Criminal Courts of first instance—*i.e.*, such Courts as the accused comes before for trial—it now remains to add a few words on the matter of Criminal Appeals.

The Courts of Quarter Sessions, in addition to their functions as Courts of first instance, are also Courts of Appeal both on questions of fact and law from summary convictions before Justices in Petty Sessions or Stipendiaries in Police Courts. From Quarter Sessions themselves and from Assize Courts an appeal on a point of *law* lies at the *discretion* of the Judge presiding over the trial in the case of a *conviction* to what is known as the "Court of Crown Cases Reserved," a Court composed of five at least of the High Court Judges. The words italicised above show the narrow limitation of the right of appeal in such criminal cases as it now exists, a point prominently before the public on a recent occasion in what was known as the *Beck* case. As the law stands there is no appeal as to *fact* from a decision of Quarter Sessions or Assizes, save by application to the Home Secretary to advise the Crown to exercise its prerogative of mercy. A Bill, however, is now before Parliament which, if it becomes law, will confer a very much wider power of appeal in criminal cases.

There are one or two other proceedings in the nature of appeals on points of law in criminal matters, such as "Certiorari" and "Writ of Error" or by "Case Stated," the technicalities of which are, however, so disproportionate to their interest for accountants that I must forbear to do more than merely mention them in such a summary as the present.

Before leaving the subject of the Criminal Courts I ought, perhaps, to allude to the "Court of the Lord High Steward." Where a peer of the realm is indicted for treason or felony he has a right to be tried by his peers in the House of Lords. The House of Lords, when so sitting, constitutes what is known as the Court of the Lord High Steward, who is a peer appointed to the office for the occasion by the Crown by letters patent under the Great Seal with commission to try the offence. The peers in such cases form the jury, and the verdict is a verdict of the majority. It may be remembered that as recently as 1901 a peer was tried in this Court on a charge of bigamy.

### Weekly Notes.

**The Auctioneers' Institute.** The President of the Auctioneers' Institute, Mr. James Boyton, and Mrs. Boyton, gave an At Home on the 6th inst. to celebrate the removal of the Institute from Chancery Lane to its more commodious head-quarters at No. 34 Russell Square, W.C. In view of the fact that the membership of this Institute now numbers nearly 1,800 it will be seen that this change was practically a matter of necessity. The new premises contain a handsome council chamber providing seating accommodation for two hundred, a library, and a reading room.

**The Licences Insurance Corporation and Guarantee Fund, Lim.** The directors' report and accounts of the Licences Insurance Corporation and Guarantee Fund, Lim., for the year ended the 30th December last has now been issued. The net premium income for the year was £92,757 19s. 8d., while other receipts amounted to £5,637 8s. 4d., claims and legal expenses incidental thereto (after adjusting the reserve for outstandings) absorbed £57,203 16s. 7d., management expenses amounted to £31,170 13s. 4d., and the reserve for unexpired risks has been reduced from £42,700 to £42,608 18s. 2d., thus making a profit on the year's operations of £10,111 19s. 11d., to which must be added £3,460 18s. 4d. brought forward from 1904, making a total of £13,572 18s. 3d. to be dealt with, of which it is proposed to apply £4,127 in payment of a dividend on the ordinary shares of six per

cent. free of income tax, leaving £9,445 16s. 3d. to be carried forward. The investments are stated in the Balance Sheet at cost, but the auditors' report, which is printed at the foot of the Balance Sheet, states that taken at the middle market prices on the date of the Balance Sheet there was a depreciation in the securities quoted in the Stock Exchange list of £18,963 17s. 4d.; this, however, is of course covered several times over by the General Reserve Fund of £50,000.

**What is a Prospectus?** A correspondent has forwarded to us the prospectus of a new company which, of itself, does not call for any detailed comment. We observe, however, that it was sent to a member of the Institute at his private address, accompanied by a circular letter sent by a firm of Chartered Accountants, of whom one is the secretary of the company. This letter, while expressing the hope that the addressee would be able to apply for shares, stated that the present business was most successful, and there was every prospect of an increase both in the receipts and in the future value of the property. Apart altogether from the question of the desirability from a professional point of view of one member of the Institute thus writing to another, we may point out that it is an extremely open question whether the circular in question is not a prospectus of the company within the meaning of the Act. However that may be it is, we think, beyond discussion that the practice of supplementing printed prospectuses by letters, whether circular or otherwise, still further enlarging upon the advantages of the shares offered for subscription is open to the gravest abuse if such letters be not in law prospectuses; while if, on the other hand, our impression is correct, and they are held to be prospectuses, then the practice is one of extreme danger to those who take part in it or allow it to be done.

**Decisions in the House of Lords.** In common with most of our legal contemporaries we have had occasion from time to time to draw attention to the fact that the infrequent sittings of the House of Lords as a judicial body are detrimental to the interests of the community, causing as they do great delay in the final settlement of questions involving intricate points of law. We have not yet observed any very notable improvement in this respect, but we have little doubt that most business men will agree with us in saying that even a more serious delay than that which is at present normal

would be preferable to an earlier hearing with an inconclusive result; and, indeed, this proposition is so obvious that we should never have thought of referring to it but for the fact that it appears to have been in some extraordinary way overlooked by the law lords. The *Paquin* case, the result of which was announced by some of our contemporaries on the 1st inst., raised a question the considerable importance of which had been duly appreciated in the Courts below, but which was set down for hearing in the House of Lords with four Judges in attendance, and as they were equally divided in opinion a judgment on purely technical grounds was delivered dismissing the appeal, without, however, of course any real decision being come to with regard to the matter. We should have thought that, in the case of a body where the President does not hold a casting vote, the futility of sitting with an even number of Judges would have been sufficiently obvious to have avoided so ridiculous a *contretemps*; indeed, the one redeeming feature about the whole matter seems to be that it shows that the strictures which were somewhat freely levelled against the ex-Lord Chancellor have apparently no personal application whatever.

**Solicitors  
Advising as to  
Investments.**

The Court of Appeal recently upheld the decision of Mr. Justice Walton, sitting with a special jury, in the case of *Pulling v. Earle*, that the plaintiff in that action was entitled to £470 damages for loss sustained owing, it was asserted, to the defendant's negligence. The facts as reported appear to be that the defendant, while acting as solicitor to the plaintiff, advised a certain investment which afterwards turned out badly without disclosing the fact that as an underwriter he was interested in the success of the issue. Their Lordships expressed the view that no doubt the defendant had acted innocently, but in view of the fact that he occupied a fiduciary position to the plaintiff it was incumbent upon him to disclose his exact position in relation to the matter.

**The East Ham  
Audit.**

In our issue of the 17th February last we commented upon the position created by the report of the District Auditor of the East Ham Urban District Council, which was issued in August last, although relating to the financial year 1903-4. The dilatory procedure of official audits is well known by the fact that although this Council has been

dissolved and its duties taken over by a Corporation upwards of fifteen months since, the accounts of the now extinct Council remain uncertified since the 26th March 1903. In the issue referred to we drew attention to the great delay that had taken place not merely in the official audit, but also in the inquiry ordered by the Corporation. The position would, however, appear to be hardly yet in any material way improved. According to *The Municipal Journal* the Committee of Inquiry made a formal report to the Council on the 13th ult. that a copy of the clauses prepared and submitted to the Auditor's Report Committee in reply to the statements contained in the auditor's report, together with a copy of the report referred to as being read by the Chairman of that Committee at their meeting held on the 7th ult., should be forwarded to each member of the Town Council for consideration by the Council in Committee at a subsequent date. At a subsequent meeting of the Council, however, the Committee reported that they had decided not to submit for the approval of the Council the various clauses dealing with the report of the District Auditor, and the position would thus appear to be not very sensibly advanced from that obtaining at the date of the Committee's appointment. Our contemporary states, however, that the Mayor of East Ham has undertaken that the whole matter shall be brought before the Council in Committee at an early date, and it must be admitted that no date that could now be fixed upon would be too soon.

**Edinburgh  
Three per Cents.**

It will doubtless be remembered that a short time ago a question was raised in connection with Edinburgh Corporation Stock. The Private Act of 1894 provided that the stock was "redeemable at the option of the Corporation at par, "after the expiration of a period to be fixed by "resolution. . . ." As regards the first issue, the prospectus stated that the stock would be redeemable on 15th May 1924, but it was open to question whether this date applied to later issues in view of the terms of the Act and the resolutions of the Council under which the issues were made. The Corporation now appears anxious to avoid any appearance of distinction between the various issues, and the Finance Committee have decided to recommend the City Council at its next meeting to pass a resolution to the effect that all the issues of the stock mentioned, up to the passing of such resolution, be redeemed at par on May 16th 1924, with interest to date.

**The Relative Merits of British and American Insurance Policies.**

A correspondent of *The Financial News*, in the course of a lengthy article, seeks to show that British offices are the most advantageous to the investor,

looked at from the three great points of life assurance, which are said to be:—

- (1) The creation of an immediate estate in case of death.
- (2) An absolutely safe investment for savings represented by annual premiums.
- (3) A proportion of profits in the shape of a bonus in addition to the amount of original insurance.

As regards No. 3, the American offices are said to be showing falling results, and the following short comparison is given to point its own moral:—

	The American Company. Per cent.	The English Company. Per cent.
Expenses on Renewals .. ..	11'80	5'07
for obtaining new Business ..	118'02	50'67
Rate of Interest assured .. ..	4 & 3/4	2 1/2
earned .. ..	£4 5s. 8d.	£4 2s. 0d.

The particular point which the essayist appears to wish to drive home seems to be the desirability of American policy-holders exchanging into British offices.

**The Value of Details.**

A semi-millionaire has been telling the editor of an American contemporary

how to succeed, and although the result is characteristic, there is a grain of truth in it that should not be missed:—

"Most concerns that go to the wall nowadays fail because their managers don't know what they are doing. Sounds almost foolish, doesn't it? But I have seen mine owners and mine managers come and go—mostly go—good business men, shrewd, honest, pushers, good salesmen. If I asked ten of them the exact cost of mining a ton of coal in their mines on the preceding day, every one of the ten would look at me in silent wonder and ignorance. Yet I have seen the margin of profit on coal so small that a difference of 3c. a ton in the cost of mining meant the success or failure of the mine.

I knew a mine that went broke because the mules had sore necks. The collars of the harnesses were not made just right; that chafed the skin; that delayed the little cars that carried the coal to the shafts; that reduced the output of the mine 5 per cent.—and expenses were the same. If the manager of that mine had had daily reports the faulty collars would have chafed the mules' necks only one day. The mine manager who gets daily reports on mine costs and

conditions need never fear more than twelve hours loss; he will catch it on the following morning and can rectify it.

In fact, I place that as the prime requisite of any success; close touch with details—both in place and in time."

**The Outlook of Accountancy.**

A very interesting address was delivered by Mr. E. M. Carter, F.C.A., before the members of the Birmingham Chartered Accountant Students' Society last week, "The Future of Accountancy" being the title of the paper. Supported by Professor W. J. Ashley of the Birmingham University, the President reminded students that not only was accountancy a new profession, but it had also during its short life greatly changed in character. Even their present state might be merely a transitory one. There was always a hankering after official auditors on the part of some people, and it behoved them to strengthen their position and to justify their position in every way possible. No consideration of personal advantage should lead them to give a certificate which they did not conscientiously believe to be correct. Dealing with the question of education, the lecturer recommended all students to consider, before entering on their articles, the advantages offered by the Birmingham University in the curriculum leading up to the degree of the Faculty of Commerce. Whenever they signed a Balance Sheet of a manufacturing concern they ought to form an independent opinion as to the adequacy or inadequacy of the depreciation written off plant and machinery, and if they had an insight into technicalities it followed that they would be able to do this more intelligently. He was pleased to note that Chartered Accountants were much sought after for the posts of secretary or manager of limited companies, and he hoped the day was not far distant when a board of directors of any large undertaking would be looked upon as incomplete without a Chartered Accountant on it. Mr. Carter then dealt with the question of Municipal Accounts, and expressed a hope that although the present inquiry did not embrace the subject of audit it would follow later. Outlining the course of study pursued at the University for the degree of Bachelor of Commerce, Professor Ashley reminded the students that in accordance with the regulations of the Institute of Chartered Accountants a degree in any University enabled a man to be articled for three years only instead of five. Therefore, as the degree could be obtained in three years, if

students took the University course first and afterwards became articled, it was a distinct saving.

#### **Municipal Trading.**

The municipal traders do not seem to have it all their own way, and at Sheffield, where for some time past strong representations have been made by tradesmen interested in electric light installations against what is termed the unfair competition of the electric light department of the corporation, some controversy has arisen. An action is now said to have been commenced in the Chancery Division of the High Court by the Attorney-General, at the instance of a Mr. Albert Davidson, claiming a declaration that the corporation has no power to carry on the business of wiring consumers' houses and premises, or of supplying or fixing electric fittings in houses or other buildings, or to sell motors outside the city of Sheffield, or to expend in such trades or businesses any capital moneys borrowed for the purposes of their electric light undertaking, or the receipts of such undertaking. We understand the action will be defended. If we remember aright similar complaints have been made with reference to the supply of gas fittings by the Birmingham Corporation, but we do not think any retributive measures have been discussed.

**Auditing and the Gentler Sex.** Judging from the following advertisement, which we cull from the columns of an American daily paper, the condition of things since "Adam delved and Eve span" is still one of progress. Or can it be that, in their feverish haste to divest accountancy of its recognised nomenclature, our cousins o'er the sea have allocated the word "auditing" to some of the inner mysteries of chiffon?

Young Girls wanted for our auditing office. Apply main office, 3rd floor. Bloomingdale Bros., Lexington to 3rd av., 59th to 60th st.

**Parliament and Company Law.** Speaking at the Institute of Directors last week on "Company Law," Mr. J. Martin said it was not very creditable to a commercial nation that the Companies Acts should be found in a series of statutes stretching from 1862 to 1900. The reform he considered to be most pressing was the codification of the existing law relating to joint-stock companies. He saw no reason for any drastic changes in the law—codification and simplification were all that were required. In the discussion

which followed, one member of the audience rather ungenerously suggested that the very reason for Parliament's inactivity in regard to company law was that it included too many lawyers and too few business men.

#### **Cornering in France.**

The "cornering" of such commercial commodities as come under the phrase "necessities of life" is a criminal offence in France, and since 1793 the barrier has been made so strong that all persons who destroy such goods or permit merchandise of prime necessity to perish, whether their own property or not, are within the Act and therefore punishable. Among the articles thus protected are grain, bread, meat, wine, vegetables, fruit, butter, vinegar, coal, wool, silk, &c. The criminal code likewise prohibits manipulations tending to bring about an advance or fall in price that is not warranted by the law of supply and demand. It may be noted that tobacco, being a Government monopoly, is outside the protective scheme. The penalties consist of imprisonment and fine and the placing of business premises under police supervision for from two to five years. Companies are handled quite as expeditiously as individuals, for every director and employee in a managerial capacity is held equally responsible. For a second offence it is said that the penalty is so severe as to almost result in the extermination of the establishment.

#### **America and Corrupt Corporations.**

In a recent speech, which has been widely commented upon in the States, Attorney-General Herbert S. Hadley, of Missouri, dealt in a striking manner with the overshadowing evil of corrupt corporate influence. From an American contemporary's report we gather that the Inquisitor of the Standard Oil Trust said that a few years since a Justice of the Supreme Court declared that four-fifths of their trade was owned by corporations. The proportion had not decreased, and it was a conservative statement fully sustained by investigations that a large portion, if not the greater portion, of their commerce was owned by corporate interests which were unlawful either in the plan of their organisation or in the method in which their business was conducted. He did not believe that their industrial system could continue to exist half lawful, half unlawful. He believed that public sentiment and

conscience would require that men who would be regarded as respectable must be honest; that lawyers should cease to be accessories to violations of the law and be true to the principles and traditions of their profession; and that the Courts should cease to place the form above the substance and the method above the right. If they would search for an explanation of the bribery of Councils or Legislatures they would find that some business interest had been seeking some special privilege or dishonest advantage which it could not obtain by the honest judgment of the representatives of the people. Behind the political boss, sustaining him in his power, was the industrial boss, the captain of industry, who sought to profit thereby. If they found a legislative Act unfair and unjust in its provisions and its purposes, which had been killed by the use of money, they would find in the great majority of cases that it had been directed against some great business enterprise whose plan of organisation or whose method of business was such that it feared to make an open fight with the possibilities of resulting exposure.

**A Code for Directors.** In view of recent happenings it is interesting to note the following résumé of the duties of a director from *The American Bankers' Magazine* :—

"I do not defend anyone who accepts the office of a director and knowingly and willingly allows dishonest or discreditable transactions to take place; but I do say that in a corporation whose assets run up into millions, whose daily transactions amount to millions, whose business ramifies in a hundred different departments, it is impossible for a director, no matter how able, to do more than attend to the general matters that are brought before him. He must necessarily give a wide scope to the powers and functions of the executive officers and heads of departments. For him to attempt to do otherwise would require him to have the heads of Cerberus and the arms of Briareus."

**Municipal Ownership in America.** A transatlantic contemporary states that no sane person will regret the defeat of the Elsberg Bill at Albany, for the measure was intended to so amend the New York City rapid transit laws that separate contracts would have been necessary for the construction, equipment, and operation of extensions of the present subway routes. The Bill has, moreover, been said to have been based on the false and dangerous ground of enforcing as an irrevocable policy that

which, at the best, should be no more than a permissive power. The municipality must be in a position to defend itself from imposition, but that it should embark on a wholesale course of municipal trading or manufacturing, or other industrial activity, is said to be altogether a different proposition.

**Alphabet Values.** A correspondent of the *Journal of Accountancy* (New York) gives the following table of alphabet values in the Ledger, compiled from over two hundred thousand names :—

	Per cent.		Per cent.		Per cent.
1 S. ..	11'27	10 K. ..	4'57	19 O. ..	1'50
2 B. ..	9'40	11 P. ..	4'38	20 V. ..	1'12
3 M. ..	8'95	12 D. ..	4'17	21 I. ..	'57
4 H. ..	8'05	13 F. ..	3'96	22 U. ..	'56
5 W. ..	6'87	14 A. ..	3'25	23 Z. ..	'40
6 C. ..	6'64	15 T. ..	2'90	24 Y. ..	'37
7 R. ..	5'00	16 E. ..	2'29	25 Q. ..	'18
8 L. ..	4'83	17 N. ..	2'20	26 X. ..	—100
9 G. ..	4'70	18 J. ..	1'87		

On account of the greater proportion of foreign names in America this table would be quite unsuitable here, but it may be useful for comparative purposes.

**Discrimination and False Classifications.** During the progress of the Inter-State Commerce Commission's inquiry into the question of rebates and discrimination as affecting American railways, it was said that the railway companies had permitted exclusive shippers to make false classifications, which is, of course, simply rebating under another form. The total number of dishonest manifests made out in the metropolitan district, including the Jersey shore, totalled 34,000 in one month. There were firms who misdescribed their shipments every day and many times per day without the slightest hesitation. The Inspector-General for the Trunk Line Association in New York, Connecticut, Massachusetts, Baltimore, and Philadelphia, who told all these interesting facts, said his bureau costs 10,000 dollars to run, and it saved many thousands to the railway companies.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

### Licensing Act, 1904.

*To the Editor of The Accountant.*

SIR,—In the case of a house leased to a brewer with a nominal quit rent, which is less than the proportion of the licence deductible according to the scale given in



the Act, what is the course to be taken? As the superior landlord is entitled to compensation in the event of non-renewal of the licence, it seems only right that he should contribute proportionately to the annual charge.

Yours faithfully,

Devizes, April 12th 1906. D. OWEN, F.C.A.

### Debentures.

(To the Editor of The Accountant.)

SIR,—Will you please state your opinion in the following circumstances:—

A company (some seven or eight years since) went into voluntary liquidation, and at that time there were 1st and 2nd debentures, which have not been paid off and the property remains unsold, and the income is insufficient to pay the debenture interest. Will you please state whether interest should cease from the date of the winding-up, or, in case of the property being realised, should the 1st and 2nd debenture-holders share the loss of interest *pro rata*?

Yours faithfully,

10th April 1906.

ENQUIRER.

[It depends entirely upon the conditions upon which the debentures were issued.—Ed. Acct.]

(To the Editor of The Accountant.)

SIR,—I should be much obliged if you, or any of your readers, would answer the following questions:—

(1) In the case of a debenture-holders' receivership, where the debenture interest is in arrear and the assets do not realise enough to pay the debenture-holders the full amount of their claims, what proportion (if any) of the amount distributed is to be considered as interest and what as capital, the Surveyor of Taxes having made a claim for income-tax on debenture interest?

(2) In the case of a subscriber to a memorandum of association who has not paid anything on his share, nor received any scrip or share certificate for same, would a transfer deed be necessary in order to transfer his interest in the company?

Thanking you in anticipation,

I am, yours faithfully,

April 10th 1906.

T. E. A.

[ (1) Income-tax is payable upon all interest received, but only on interest. (2) Yes.—Ed. Acct.]

### The St. Marylebone Electric Lighting Accounts and the Local Government Board Auditor.

(To the Editor of The Accountant.)

SIR,—The Council of the above-named Metropolitan Borough has just issued its annual report and abstract of accounts for the year ended 31st March 1905. At page 75 of the abstract one finds the following net Revenue Account in connection with its now famous electric lighting undertaking, with a most remarkable foot-note:—

Dr.		No. 4. NET REVENUE ACCOUNT at 31st March 1905.		Cr.	
1.	To Balance brought from Revenue Account (No. 3) ..	£	s	d	
2.	" Expenses of obtaining Loans .. ..	2,119	12	9	
3.	Interest on Loans and Bank Advances .. ..	2,381	4	2	
4.	Proportion of Costs of obtaining Order and Act of 1901 and Act of 1904 (transferred from Suspense Account, No. 5) .. ..	15,525	19	6	
		1,043	1	9	
	To Cr. Balance carried forward .. ..	21,069	18	2	
		15,965	19	0	
		£37,035	17	2	
					£37,035 17 2

Mem.—Interest on Loans accrued to date, but not due for payment, amounting to £21,109 os. 3d. has been omitted by request of the Local Government Board Auditor. Taking this liability into account, there is a Dr. Balance at date of £5,143 15s. 3d.

The foot-note has evidently been placed there by the Borough Accountant and Electrical Accountant of the Council, as the aggregate Balance Sheet (p. 90), certified by the District Auditor on the 17th November 1905, shows the credit balance of £15,965 19s. on Electricity Account. What can be the value of the accounts of a municipal trading undertaking which are made up and finally passed in this manner to suit the require-

ments of a Government Statistical Department and their so-called independent official, the District Auditor?

Unless the St. Marylebone Order of 1901, and their Acts of 1901 and 1904, contain provisions enabling the deficiency of income in any year to be postponed, it is clear that the ratepayers of the borough during 1905-1906 have escaped raising a legitimate burden of

£5,143 1s. 3d. which should have been cast upon them, and this forsooth "by request of the Local Government Board auditor"!

The London County Council also seem to believe in the omnipotence of the District Auditor, as, in their fresh proposals for the equalisation of rates as between the rich and poor London boroughs, they propose to select certain classes of net expenditure (*e.g.*, roads maintenance, street lighting, public health, sewerage and drainage works) to rank for equalisation, but carefully exclude revenue-producing undertakings, such as public libraries, baths and washhouses, burial grounds, electric lighting, and housing of the working classes, classifying them as optional services.

Can the District Auditor be trusted, in the face of the Marylebone incident narrated above, to ascertain the exact surplus or net deficiency on the optional services which will be required to be deducted from or added to the net cost of the local services common to the metropolis?

Yours faithfully,

FELLOW OF THE INSTITUTE OF MUNICIPAL  
TREASURERS AND ACCOUNTANTS.

London, 9th April 1906.

## Reviews.

### Personal and Domestic Accounts.

By J. G. P. IBOTSON, A.C.A.

London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 1s.

This little handbook will be found of value to the man of affairs who desires to keep an account of his personal transactions in a manner which, while making no great demands upon his time, will yet serve all reasonable purposes of record and comparison. With a view to completeness chapters have been added upon Income-tax and Trust Accounts, but the attempt has been made to deal with these within such narrow limits that their practical value is of necessity materially curtailed.

### Some Account of Wymondley Priory.

By W. H. FOX, F.S.A., F.C.A.

London, 1905: Dalziel & Co., Lim., The Camden Press.

This pamphlet, excellently got up in old-fashioned style, is a reproduction of a paper read by Mr. Fox at a meeting

of the East Herts Archæological Society held on the 31st August last, which will be found of especial interest to those of our readers who, like its author, are of an antiquarian turn of mind, but which to the majority will probably be chiefly noteworthy for its reproduction of an inventory of the Priory's belongings on the 3rd March 1537, the date presumably when the monastery was dissolved. We gather that in those days 2s. an acre was a fair valuation for corn land, but that cart-horses with their harness were worth 5s. apiece. It might be of interest to some to compare these values with those comprised in the inventories now being taken in France with so much trouble.

### Law for the Million.

By A PRACTICAL LAWYER.

London, 1906: Simpkin, Marshall & Co., Lim.

Second Edition. Price 1s. 6d. net.

The volume now before us belongs to a class with which we can profess no very great sympathy, representing as it does the tit-bits order of knowledge, which is so typically a dangerous thing. At the same time it must be admitted that in the course of its 288 pages it contains a remarkable amount of miscellaneous interesting information.

## Meetings for the ensuing Week.

**Tuesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—General Purposes Committee, 3 p.m.

**Wednesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Library and Publication Committee, 2.30 p.m.

LEICESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Lecture, "The Sale of Goods," by Mr. E. Huntsman, Solicitor (Nottingham), at Winchester House, 1 Welford Road; 7 p.m.

**Thursday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Investigation Committee, 3 p.m.

MR. W. A. FOYLE, Educational Bookseller, announces that owing to a large increase in trade he is taking more extensive premises at 135 Charing Cross Road, W.C.

HARMSWORTH ENCYCLOPÆDIA.—Parts 28 and 29 of this invaluable publication have now been issued. Each part consists of 160 pages of matter profusely illustrated.

## Sheffield Chartered Accountants Students' Society.

### Colliery Accounts.

By A. DUNCAN BARBER, F.C.A.

A LECTURE delivered to the members of the above Society, March 21 1906.

#### *History.*

The first traces of coal were found in connection with the ancient Briton's iron works at Sheffield, but it was not until the reign of Henry III., in the 12th century, that the first State record appeared in the form of a Charter to the burgesses of Newcastle-upon-Tyne to dig for coal.

Coal was first brought to London in the reign of Edward I., and its introduction was strongly opposed for some considerable time; indeed, Edward II. received a petition from Parliament against the black smoke which resulted from its use, the petition stating that, "if His Majesty had any love for a fair garden, a clean face, or a clean shirt and ruff, and if he did not wish his subjects to be choked, or at the very least to be smoked into bad hams, to forbid all use of the new and pestilent fuel called coal." The King therefore issued a proclamation forbidding its use, but the traders who wanted it for their business purposes secretly agreed to continue to use it, but were, of course, betrayed by the smoke, which they could not consume, and had forgotten. However, in less than twenty years it was burnt in the Palace, and not paid for, as the coal merchants had to petition Parliament for payment of their bills.

In much later times duties on the import of coal into London were a fruitful source of municipal revenue. Throughout the greater part of the 19th century these duties were applied for improvements carried out by the London municipal authorities, including the building of bridges and street widening, as well as opening new streets and the making of embankments, such as the Victoria and Albert Embankments, and that at Chelsea. Holborn Viaduct, Farringdon Street, and Northumberland Avenue are three improvements carried out with the money received from these dues.

#### *Constitution.*

A colliery consists, as you will know, of a coal seam or seams underground, a shaft or shafts sunk into the ground to communicate with the seam, and usually buildings for

engine-house, offices, store room, &c., as well as plant, which I will deal with in detail presently.

The word "usually" is inserted, because I do know of one colliery, or perhaps I should say coal mine, in the North Riding of Yorkshire which consists only of a seam, a shaft, and a rope and basket fixed to a pulley on the principle of an old-fashioned well. There is only one miner—who, I believe, is also the owner—and he climbs a mountain from necessity whenever he goes to work. This mine was visited by some friends of mine who were geologising amongst the hills in the district during the summer which followed a very large strike in the South Yorkshire coal district. This strike, which began, I think, in the autumn of 1889, had then lasted eight or nine months, and my friends imparted to this lonely miner the first news of the strike which had reached him. He thereupon promptly raised his price by two shillings a basket, and, for all I know, may still be obtaining the increased price to this day.

I cannot say what system of bookkeeping he favours, if any, but we may conclude that it is probably very single, or perhaps singular, entry, and in this paper I propose to deal with a more modern and elaborate concern, necessitating a modern, elaborate, and accurate set of accounts.

The plant of a well-equipped colliery consists principally of winding-engine, with endless wire rope; head gear above the shaft, covered by a roof of corrugated iron; cages for taking the miners down the pit, and for drawing up the coal and the men when their work is done; fan engine for supplying fresh air to the workings; corves and light rails underground; locomotives; wagons; sidings with heavy metal rails above ground, with slack washers and screens for riddling the coal and dirt brought from below; coke ovens; blacksmith's and carpenter's shops; and weighing machines, &c. &c.

#### *Seams and Royalties.*

The principal South Yorkshire seams are at two depths—an upper seam and a lower seam: the first, hard coal of good quality; the second, soft coal suitable for boilers of all kinds.

A colliery either holds the freehold or a long lease, for which it has paid a lump sum, or it leases the seam for a short term of years at a minimum rent and a royalty, the amounts paid depending on the class of coal, the thickness and depth of the seam, and similar considerations.

I will now take the Revenue Account headings, and give some notes on the principal items.

Taking the credit side first, we have:—

**Coal Sales.**—These are effected through agents at coal depôts, which you will see established at railway stations and other places. Collieries also enter into contracts direct with large consumers—such as railway companies, steamship companies, and large manufacturers; so that you will see that good business ability and sound judgment as to the best time for making contracts are required from the management. When the trucks or railway wagons are loaded they are weighed before being despatched. The weights are recorded in the Weight Book, which is ruled to show all necessary details—Date, Destination, To whose Account, Gross Weight, Tare of Truck, Net Weight of 20 cwt., and Charged Weight of 21 cwt. to the ton, it being the custom of the trade to give an extra hundredweight on each ton sold.

From this book the invoices are made out, and the form of declaration upon which carriage is charged is made to the railway company.

The invoices are posted to the Weight Ledger, which contains an account for each customer, and at the end of a month the totals of the customers' accounts are ruled off, and put through the Day Book to be posted to the debit of the customer in the Sales Ledger.

**Carriage of Coal.**—In addition to the actual cost of the coal sent to customers, they are charged with carriage thereon, the rate varying with the distance over which delivery must be made. For this reason unfortunate people like myself, who live literally over a coal mine, can get good house coal for 12s. or 13s. a ton, whilst the happy inhabitants of London, or its suburbs, must, or may, pay nearly twice as much, or even more than that.

To check the Railway Carriage Accounts, and to obtain the proper amounts to be charged to customers, the Weight Book is abstracted daily to show wagons charged, weight declared on account of customer, and customers' wagons.

If the colliery is well supplied with wagons this item will appear as a good credit to Revenue; but if the railway companies provide the wagons it may be that the credit will be only small, or it may even be that there is a debit to Revenue on this account.

Accounts are sent out to customers early in the month following delivery, and are payable by the end of the same month, or, in a few instances, by the end of the quarter. Net prices are charged (no discount being allowed), and payment is in almost every instance made promptly at the due date. Prices are generally cut very fine, so that a colliery cannot afford to have any bad debts, and accounts are not allowed to run on if the management is good; and

their customers knowing this almost always, as I have said, pay promptly, so that the auditor's duties in this connection are not very difficult of performance, as he will find on his final visit, say five weeks after the close of the year, that almost all the debtors appearing on the Balance Sheet have since paid, and, in addition, that the Cash Book is posted up to the day on which he makes his visit.

#### *Land Sale.*

Another branch of the sales of coal are known as Land Sales. These are sales made direct for cash or short credit to local consumers, including employees.

These sales are made direct from the pit mouth by cart, and the weights are recorded in the Land Sale Weight Book, and from there put through the Day Book, and posted to the Land Sale Ledger or to a Land Sale Account in the Sales Ledger.

The coal supplied to employees is paid for periodically by deduction from the wages, so that practically no credit is given to the men; but the other land sale customers can obtain credit, and the accounts often require careful attention from the auditor, for as the amounts are small they are liable to be overlooked.

#### *Cottage Rents.*

A colliery usually owns property near the pits, for the convenience of its workmen, and obtains the rents weekly by deduction from the wages.

The expense of Repairs, Rates, Taxes, and Insurance should be charged against the Rents Received, leaving, let us hope, a balance to the credit of Profit and Loss Account to cover interest on the capital thus invested.

#### *Royalties Received.*

The coal owner may find that he can with advantage sub-let a portion of his coal-field, and he will grant a lease to another colliery, and receive in return annual royalties or minimum rents.

I shall deal fully with the royalties when we come to consider the other side of our account, and so will only say here that, whether the royalty is received or paid, the same terms usually apply.

Receipts under this heading should be apportioned, part being carried to reserve for replacement of the capital invested in the wasting asset, the balance being revenue. The terms of the lease and the special circumstances of each case must be taken into consideration in arriving at the apportionment, which should be made by the mining expert, and not by the auditor

*Farms Account.*

In the accounts under notice there appears in the Balance Sheet under the Profit and Loss heading an item for profit of farms. We will suppose that our colliery owns two farms, with a farm bailiff to manage them, and in these unsatisfactory times of agricultural depression it is pleasant to see a balance usually on the right side. It should, however, be stated that no rent such as would be charged to an outside tenant appears in these accounts; and, on the other hand, there is no heavy charge against the colliery for damage to land and crops from their smoking chimney and coke ovens.

The whole business of farming is carried on: beasts, sheep, pigs, and poultry are bought, reared, and sold; and corn, oats, barley, hay, turnips, &c., are grown and supplied to the colliery, as well as sold to customers.

Then the farm pasture land is used to provide rest and refreshment for the pit ponies when they are brought out of the pit for a holiday above ground.

Although the accounts of our concern are made up half-yearly, and June 30th is the end of the financial year, the farm results are brought into Profit and Loss Account at December only, for this reason, that at June there is an unascertained value for growing crops. The amount can, of course, be obtained by valuation, but to save an annual expense the debit balance on Profit and Loss Account is carried forward to the second half of the year, and is usually converted into a credit or profit by 31st December.

The capital invested in each farm consists of valuation, live and dead stock, and book debts.

The receipts and payments pass through the hands of the Colliery Commercial Department, so that cash at bank or in hand is merged in the general accounts.

The valuation includes the growing crops already referred to, and the farm tools and implements cover carts, ploughs, reapers, threshing machines, loose tools, &c.

We now turn to the other side of our Revenue Account.

*Royalties Payable.*

As has already been stated, the colliery owns the freehold, or a long lease, of its coal-field, or it holds a short lease, under which it pays a minimum rent and a royalty. For example, we will suppose that our company's coal-field is partly freehold and partly short leasehold.

As regards the freehold coal, there is, of course, no royalty to be paid, but the seam has only a life of, say, 50 years, at the end of which period it will be worked out, or, in other words, there will be no more coal to get. It is therefore only prudent to set aside an annual sum to

Reserve Account to replace the wasting asset, and this sum is obtained by charging to Revenue Account annually a royalty on the freehold coal worked. Accurate measurements are made by the colliery surveyor, and a royalty of so much per acre is calculated on the area worked, and the amount charged accordingly. The rate per acre is dependent on the thickness of the seam, the quality of the coal, and its situation, these considerations having regulated the original cost, the amount varying from £60 to £600 per acre.

Turning now to the short leases of, say, seven, twelve, or fifteen years, the company pays perhaps £300 per annum minimum rent, and £50 per acre as royalty on coal worked in excess of six acres—that is, the company must pay £300 per annum, even if it works none of the coal which is the subject of the lease. There will, however, be a clause in the lease providing that the amount paid in early years as minimum rent may be applied in discharge of royalties due on coal worked in later years in excess of the minimum rent. For example, suppose the lease is seven years:—

First year's Coal worked, nil.	Rent paid £300
Second Do. 2 acres.	Do. £300
Third Do. 7 „	Do. £300
Fourth Do. 9 „	Do. £300
Fifth Do. 12 „	Do. £300
Sixth Do. 15 „	Royalty paid £750
Seventh Do. 3 „	Rent paid £300

and the payments of minimum rent would be dealt with in the accounts as follows:—

First year: No coal worked. Rent paid, £300; appears on the company's Balance Sheet as an asset, under the heading of "Short Workings Suspense Account."

Second year: Two acres worked. Rent paid, £300. £100 is charged to Trading Account as royalty paid on coal worked, and £200 is added to the Suspense Account on the Balance Sheet, which now stands at £500.

Third year: Seven acres worked. £300 paid, but £350 charged to Trading Suspense Account; now stands at £450.

Fourth year: Nine acres worked. £300 paid, but £450 charged to Trading Suspense Account; now stands at £300.

Fifth year: Twelve acres worked. £300 paid, but £600 to Trading. Suspense Account balance, nil.

Sixth year: Fifteen acres worked. £750 paid and charged to Trading.

Seventh year: Three acres worked. Rent paid, £300; must be charged to Trading because the lease is expired,

and it is not likely that it can be renewed, for a reason which is, I hope, obvious.

Of course, all this depends on the terms of the lease, which the auditor should see in order to verify the Suspense Account asset during the earlier years. He must also satisfy himself that there is a reasonable probability of the company's ability to work out this asset during the term of the lease. Suppose that when the coal was being worked the seam was flooded by the tapping of a spring, and work was continually delayed in consequence, and that, to take an extreme case, the company never once during the seven years worked as much coal as the six acres required to make up the minimum rent, the Suspense Account would, according to the terms, be piling up, and later the auditor might be called upon by the Law Courts to make good dividends declared and paid out of capital.

*Wages of Workmen* cover the underground managers, miners, pit labourers, banksmen, smiths, joiners, engine "tenters," locomotive drivers and stokers, shunters and labourers above ground. With the exception of the miners, the wages are datal—i.e., the men are paid so much per day's work.

The miners are paid at so much per ton of coal got, and record of this is kept at the pit bank machine office, where the coal brought to the surface in tubs is weighed and recorded by the weighman, who acts for the owners, and the check weighman, who acts for the men. Tallies are sent up with the tubs, and handed into the office to show who is the actual coal getter for each tub or set of tubs. The men are paid at 20 hundredweights to the ton, and the wages are made up weekly to the Wednesday night, and paid on the Friday.

The pits work two shifts in the 24 hours—a day shift from 6 or 6.30 a.m. to 3.30 or 4 p.m., and a night shift from 7.30 or 8 p.m. to 5 or 5.30 a.m., with two half-hour intervals for sustenance.

Along with the coal sent up there is often a proportion of dirt, as much as 12 to 14 inches occurring in the seam, and this is allowed to the men in their wages as though it were coal. If the band of dirt extends beyond this width the seam is considered to have divided into two, and one or both are then worked separately. There are one or two ways of treating these bands in the men's wages, and occasionally they cause friction of a more or less serious nature between the colliery owners and their workmen.

The wages are made up from the records of the weigh office by a member of the commercial office staff, the checking is done by another clerk, and the actual payment is made by a third. The manager should occasionally be

present when payment is made, and the rule as to putting this work into as many hands as possible applies.

The datallers apply for tallies on presenting themselves for work, and return them on leaving, and their attendances and times of arrival and departure are recorded, and from this information their wages are made up.

In addition to the auditor's duty of seeing that a good system of wages preparation and payment is in force, he must not overlook the fact that the company has always as much as two days' wages in hand, and should see that a reserve is made up to the last day of the financial period for wages accrued.

*Salaries and Office Wages* cover the management, the commercial department, clerks, travellers, and agents. Under this heading there will also be included the consulting engineer, the mining engineer, and the colliery surveyor.

Any changes in the appointments or salaries should in a private firm be recorded in the Personal Salary Accounts in the Private Ledger, or Salaries Ledger, and, if a company, in the Directors' Minute Book, which the auditor should ask to see.

#### *Stores and Materials.*

An accurate system of storekeeping is essential, as in all manufacturing businesses.

Requisitions signed by the manager are issued periodically for all stores required, and should be returned with the invoices that accompany the deliveries, and, in addition, as these come in they should be recorded in the Stores Book under Stores Received.

This book is ruled with Analysis columns covering the principal items—such as Iron and Steel, Timber, Oil and Grease, &c.—the left-hand page being for stores received, and the right-hand page for stores issued. Stores should only be issued on an order properly signed by someone in authority, and specifying quantities and description of what is to be given out.

Care should also be taken that stores returned should be re-debited. For example, 8-foot props may be issued, and, after use, returned to be cut down to shorter lengths, and reissued for another part of the pit.

Cases of one receipt and two issues have not been unknown, and a large discrepancy very soon appeared.

An actual stocktaking should be made periodically, which on a complete system should confirm the book stores.

*Rates and Taxes.*

Collieries, like other businesses, come under contribution to the municipal (or urban) poor and district rates, the assessments being based on the annual value of the property.

This annual value professes to represent the rent which the owners could obtain if they were to let their coal-field and buildings to a tenant, less an allowance varying from one-fourth to one-sixth meant to represent the annual cost to the landlord of repairs.

Land tax and tithes also appear in this account.

Under this heading there is also income-tax under Schedule A for the cottage property and for profits.

The preparation of the returns for this last-named assessment, and the settlement thereof with the Surveyor of Taxes, may be entrusted to the auditor in his capacity as professional accountant, so that a word or two on this subject may not be out of place.

The return is made under Schedule A, the property tax schedule. According to the rules under Schedule D the business profits schedule and the taxable profits are based on an average of five years instead of three, as in most trading concerns. There is therefore no allowance from the taxable profits for the property assessment. The principal charges to Revenue not allowed as deductions in arriving at taxable profits (as you will see, a very different matter from trading profits), are contributions to Coal Owners' Associations, payments for the hire purchase of railway wagons capitalised, interest on loans and debentures (if any), depreciation based on the life of the mine for capital sunk therein, and all minimum rents and royalties. The reasons for including these items are as follows:—

**Coal Owners' Association Payments:** Because these are in the nature of special insurance not considered necessary for the actual working of the business. A decision of the Courts against the Ebbw Vale Coal and Iron Co., Lim., governs this point. Presumably any benefit received from such insurance would not be taxable.

**Hire Purchase of Wagons Capitalised:** Because this is as an addition to plant. The amount charged to Revenue as hire only may be treated as a deduction from profits.

**Interests:** Because tax has been, or should be, stopped in making such payments of interest. Bank interest on an overdraft is allowed as a deduction, because tax thereon is accounted for to the Revenue by the bankers.

**Depreciation:** Because ordinary wear and tear of plant is all that is allowed by the Commissioners. See decision in the *Coltress Iron Co.'s case*.

**Minimum Rents and Royalties:** Because, if paid, tax is deducted; and if royalties charged on freehold coal, because this charge is in the nature of a reserve to replace a wasting asset, and as such is not in the eye of the law a charge necessary for carrying on the business.

Another item not allowed as a deduction is the amount actually paid in tax, because the Income-tax Acts specially provide for this.

All receipts and payments relating to the cottages and the farms are also excluded from the taxable profits of the colliery, because payments of tax under Schedules A and B respectively account to the Revenue for profits from these sources.

If under Section 133 of the Act of 1862, and amendments, there is an appeal which can be made for reduction of the assessment, the taxable profits are based on a three years' average. The Surveyors of Taxes say that it is an unintentional concession to the colliery tax-payer, and it is certainly to his benefit; for, to take an example, suppose the taxable profits are as under for the year of assessment ending 5th April 1905—

1899	..	..	..	£9,000
1900	..	..	..	30,000
1901	..	..	..	50,000
1902	..	..	..	20,000
1903	..	..	..	5,000
				5) 114,000
				£24,800

and the year 1904 is £2,000, then a three years' average, including the year of assessment, gives:—

1902	..	..	..	£20,000
1903	..	..	..	5,000
1904	..	..	..	2,000
				3) £27,000
				Av. £9,000

Because the average profit is reduced by including 1904, the two good years 1901-2 drop out of the average, and the company pays on £9,000 instead of on £24,800, which at 1s. in the £ is a handsome reduction. There is, however, this to be said, that the maximum allowance for depreciation is low, 3 per cent. on the value of the plant being all that can be obtained, and this is far from the amount that ought as a rule to be written off the expenditure on Capital Account, if the shareholders or owners are to find their capital intact on the termination of the life of their property.

*Coal Owners' Association* contributions have already been mentioned incidentally. These are associations for

mutual insurance to cover risk of loss in case of serious accidents and strikes. The contributions are based on the wages paid by the firms who are members of the Association, and are divided into two classes—subscriptions for the Association expenses, and contributions to the indemnity funds. In case of serious accidents heavy claims are liable to arise under the Employers' Liability (Workmen's Compensation) Act, and it is to compensate owners for such claims and for loss from strikes that these Associations exist.

*Medical Aid and Subscriptions* appear amongst the dead charges, and are both in the nature of charitable assistance to their men.

The former includes a subscription to the Workmen's Sick Club, which is often worked from the office. The men agree to a deduction from their wages of a few pence weekly to the club funds, which provide certain benefits in case of members being unable to work through illness.

The colliery also subscribes to local hospitals for patients' tickets for the use of their workmen needing hospital treatment.

*Wagon Hire.*—The balance of this account may be either a debit or a credit to Trading Account. If the company has had occasion to hire wagons in place of using its own it will be a charge against Revenue, and if it has been able to let out its own wagons it will be an earning.

*Wagon Purchase Account.*—At some period of its life a colliery usually makes payments under this heading, having entered into an agreement with a wagon building company for the purchase of, say, 100 wagons. The payments are spread over a number of years, we will say seven, and are made quarterly, say, £230 or £920 per annum. The wagons are the property of the wagon company till the end of the term, and the agreement provides that the colliery may then purchase them at one shilling each, or some other nominal amount.

The total amount therefore paid for purchase and hire is £5,105, which must be divided between Capital and Revenue. There are one or two ways by which to arrive at this division—

(1) Calculate the present value of the total payment, and take that as the Capital. The difference between the present value and the total is the charge to Revenue, which should, of course, be debited in sevenths annually.

(2) Calculate interest at 5 per cent. per annum on the unpaid quarterly balances and charge the interest to Revenue. This amount will be a decreasing one, thus—

3 Months Interest on		Payment	Capital	Interest
		£	£ s d	£ s d
£5,100 @ 5% per an.	25 Mar. 1905	230	166 5 0	63 15 0
4,870	" 24 June "	230	169 2 6	60 17 6
4,640	" 29 Sept. "	230	172 0 0	58 0 0
4,410	" 25 Dec. "	230	174 17 6	55 2 6
			<u>£682 5 0</u>	<u>237 15 0</u>
				Revenue Charge

and so on over the seven years.

There is then to be considered the question of depreciation. The life of a wagon may be put at about fourteen years, but for seven years the wagons are not the colliery owner's property, as, if he fails to pay an instalment, they can be claimed by the wagon company. It must be remembered, however, that when they do change hands one-half of their life will have expired, so that assuming them to be worth £52 each if bought outright they should then be worth £26 each, or altogether £2,600. £350 should therefore be written off in depreciation annually from the commencement of the hire purchase agreement, and this at the end of fourteen years will leave a value of £300, or £3 per wagon, which may be considered a reasonable breaking-up or scrap value.

In addition, Revenue must bear the cost of repairs for ordinary wear and tear.

Under the system just described the earlier years will have to bear the larger interest charges as well as the depreciation, and to avoid this, and average the annual charge to Revenue, the interest may be calculated in advance and the total charged in sevenths annually. Depreciation will also be charged annually in equal amounts per annum, and repairs as they are required.

*Corves* are the small coal trucks or tubs which bring the coal from the workings to the shaft and then to the surface. The rough work does not allow of their lasting for more than a comparatively short time, and so each year there appears an item for replacements as a charge against Revenue.

*Professional Charges*, covering Legal Costs, Auditor's Remuneration, and possibly Accountancy Charges for additional services.

There is naturally a certain amount of legal work in connection with leases, purchase of properties, arrangement of mortgages or loans, &c., and a law bill follows sooner or later. As a rule, I should say that this occurs later rather than sooner, and that the bill when rendered, especially if it is a large one, refers to matters which came under the auditor's notice eighteen months or two years earlier than the accounts in which the bill appears.

The Minute Book of the company, or an inquiry of the partners (if a firm), will probably enable the auditor to



get an estimate of the costs incurred during the period under audit.

As to accountancy charges, it is only necessary to say that, in my opinion, every colliery should appoint an auditor from the profession, and pay him an adequate fee.

*Brickmaking.*—Along with the coal there is often found suitable clay for bricks, and where this is the case it is to the advantage of the colliery that it should at any rate manufacture for its own requirements, even if it does not go into the market. Our company has therefore its brick-making plant, including brick machines and ovens, and bricks are supplied to the pits at 21s. per thousand. The price is considerably less than would be charged if bricks were bought from an outside firm, but it is approximately the actual cost of manufacture.

*Depreciation.*—I believe it is correct that there is no legal obligation on a colliery company to provide for the wasting away of its property, and that the case of *Lee v. Neuchâtel Asphalte Co.* is still the authority, so far as the law is concerned. But surely it is desirable that the shareholders at any rate should find their capital represented by some available asset when the substratum of the company's business is gone, either through the working out of the seams owned, or by the expiration of the leases. If this is agreed, then the auditor must satisfy himself that sufficient depreciation is being charged annually to provide (1) for the wasting away of the coal seams; (2) for the ordinary wear and tear of machinery and plant; and (3) in the case of a lease, for the reduced value of the capital sunk by the mere effluxion of time.

The wasting seams are provided for, as already mentioned, by charging royalty on freehold coal worked.

Wear and tear should be a percentage varying from, say, 5 per cent. to 12½ per cent. on the capital value of the machinery and plant.

Expiration of lease should be a proportionate part of the capital sunk over the period of the lease, after making allowance for any residuary value for breaking up.

In conclusion, I feel that the foregoing notes are a very inadequate survey of a colliery's accounts, but if there are any remarks which prove to be useful knowledge to you as students I shall feel that my labour has not been entirely in vain.

## Manchester Chartered Accountants Students' Society.

### "Points in Company Practice."

The last ordinary meeting of the session was held on Monday, 26th March, at the Library, 60 Spring Gardens, when a good gathering of the younger members listened to papers on "Points in Company Practice," by Mr. W. O. Buxton and Mr. A. F. Rountree, who had taken the first and second places in the December Final of 1904. A very interesting and animated discussion followed, the following members taking part in the debate:—Messrs. Lunt, Dryden, Porter, Fawcett, and Brown. The value of the discussion was perhaps increased by the speeches by the President, Mr. A. G. Wilde, Mr. Theodore Gregory, and Mr. H. S. Ferguson, raising many points brought out by experience, each adding his meed of praise to the two excellent papers which had been read.

By Mr. W. O. BUXTON.

When Mr. Wood invited me to give a short paper on "Points in Company Practice," he informed me that it was to be a students' evening. I presume that he meant that the meeting was intended more particularly for examination students, and it was with this in view that I selected the points with which I propose to deal to-night, viz.:—Forfeited Shares: their Record and Re-issue, and Profits earned prior to Incorporation.

These are points which rarely come under the notice of the average articled clerk in practice during the course of his articles, and, because of their comparative obscurity, he is in danger of paying too little attention to them in his studies, with the result that he only gets, at the best, a somewhat foggy notion of the principles involved.

I want, if possible, to dispel a little of the fog surrounding these questions, though with the limited time at my disposal I am afraid that I cannot go very deeply into them.

#### *Forfeited Shares: their Record and Re-issue.*

This point of company practice affects us in a double capacity—viz., as accountants and as auditors. As accountants we are often called upon in the case of private limited companies to keep the record of the transactions appertaining to the Private Ledger, which usually includes the

Share Capital Accounts as well as the various nominal accounts. As auditors we are sometimes brought face to face with the problem in the examination and criticism of the accounts of joint-stock companies. It is therefore important in our professional capacity, as well as for examination purposes, that we should have a clear understanding of the point.

The forfeiture of shares is the confiscation by a company of the shares of certain of its members, together with the sums paid up on those shares, under certain circumstances provided for in the articles of association of the company. The effect of a valid forfeiture is that the shareholder ceases to be a member, and the company takes the shares, which it may dispose of for its own benefit. A power of forfeiture is strictly construed, and every condition must be complied with, otherwise it is invalid. It is important, therefore, in dealing with this matter to ascertain (1) that the company has power to forfeit the shares; (2) that it makes a proper use of the power; and (3) that an accurate record of the transaction is made in the books of the company.

*The Power.*—It must be remembered, then, (1) that a company cannot forfeit shares unless an express power to do so is given by the articles of association of the company; and (2) that, if it has the power of forfeiture, the only grounds on which it can forfeit shares is for the non-payment of calls.

If the articles do not give a power of forfeiture then they may be altered or extended by special resolution, and the company may take the power.

*The Exercise of the Power.*—If the company desires to exercise the power it is most important that all the requirements of the articles, such as giving proper notice to the defaulting shareholders, and other formalities with which I do not propose to trouble you, are strictly complied with. Moreover, the forfeiture must be made solely in the interests of the company, and not for the purpose of relieving the shareholder of liability to pay further calls. Although the forfeiture of the shares may be made in the interests of the company by the company, yet there is opened an avenue for the shareholder to escape his liability to pay the calls due on his shares by simply refusing to pay them when made, and awaiting the consequent forfeiture of the shares by the company. A very important provision, which effectually blocks this avenue of escape, is usually, but not always, inserted in the articles giving the company power to recover the calls due on the shares notwithstanding the forfeiture. This provision is also important because it affects the method in which the transaction is recorded in the books of the company, as we will shortly see.

A valid forfeiture of shares does not amount to a reduction of capital within the meaning of the Companies Acts, and the method in which Table A in the Companies Act, 1862, sets out such shares in the *pro formâ* Balance Sheet leads one to believe that it was the intention of the Legislature that it should remain part of the capital of the company. But a forfeiture of shares is tantamount to a reduction of capital because (1) it reduces the number of active shares, and (2), in the cases in which a power of recovery is not reserved, it reduces the callable capital of the company. The Court consequently takes a very strict view of forfeiture.

*The Record of the Forfeiture.*—For the purposes of illustrating the record of the transaction in the books of a company, let us assume that the X. Co., Lim., has a capital of 50,000 £10 shares, which have been issued with £3 due on application, £3 due on allotment, and £2 due on each of the first and second Call Accounts. All shareholders have paid the amounts due with the exception of one holder of ten shares, who is in arrear on the first and second calls. The company have power and proceed to forfeit the ten shares.

The position in the books at the date of forfeiture is that there is a debit balance of £20 on each of the two Call Accounts for calls in arrear. Now to properly record the forfeiture it is essential that we ascertain from the articles whether the company has power to recover unpaid calls on forfeited shares. In the first case, let us assume that no such power is reserved. The procedure will then be:—Debit Share Capital Account with £100 because the active capital was previously credited with, and is now to be reduced by, that sum. Credit first and second Call Accounts each with £20, because these sums are no longer recoverable and the arrears must be wiped off. Credit the remaining £60 to Forfeited Shares Account, because that is the amount of calls paid on the forfeited shares, for which the company is liable to account.

In the second case, where the company has power to recover the unpaid calls, the transaction assumes a rather different form. The procedure in this case is:—For the same reason as before debit Share Capital Account with the face value of the shares, £100, and credit Forfeited Shares Account with the same amount, because, although £60 only has been received, the company may recover the whole £100. It is inadvisable that the balances should be left standing on the Call Accounts, and therefore these two accounts should be credited with £20 each and "Calls in Arrear on Forfeited Shares" debited with £40, which would in turn be credited with any sum which may afterwards be recovered from the defaulting shareholder.

The way in which each should be set out in the Balance Sheet is:—

## (1) Share Capital Account:—

50,000 Shares of £10 each ..	£500,000
Less 10 Shares forfeited ..	100
49,990 Shares .. ..	£499,900

## Forfeited Shares Account:—

Amount paid on Shares forfeited .. ..	60
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(2) In this case the Share Capital Account would read as before, but the Forfeited Shares Account would be stated as follows:—

## Forfeited Shares Account:—

Amount due on 10 Shares forfeited .. ..	£100
Less Calls in Arrear ..	40
	£60

I am quite aware that I am now trespassing on debatable ground, but I venture to suggest that this is the best method of recording the transaction, because it expresses most clearly the legal and financial effect of the transaction.

*Re-issue.*—We now come to the question of the re-issue of the forfeited shares. Ordinarily the articles provide that the forfeited shares become the property of the company, and the directors may re-allot or otherwise dispose of the shares as they think fit. This brings us to an interesting point. The Companies Acts provide that shares cannot be issued at a discount. Can a company, therefore, re-issue forfeited shares at less than their face-value? It was decided by Mr. Justice (now Lord Justice) Romer in the case of *Morrison v. Trustees, Executors, and Securities Corporation, Ltd.* (*Accountant Law Reports*, 1898, p. 132), that forfeited shares could be re-issued at less than their face value—i.e., with a sum credited upon them as partly paid up, provided that the amount so credited as having been paid up did not exceed the sum which had actually been paid up on them at the time of forfeiture, and that such a re-issue did not amount to an issue of shares at a discount. This was upheld by the Court of Appeal, the Master of the Rolls stating that he did not see why a company that had power to forfeit shares should be compelled to ignore the fact that it had received whatever it had received on account of those shares.

We now come to the record of the re-issue of the shares. Let us for a moment assume that the X. Co., Ltd., re-issue the forfeited shares as fully paid up in consideration of the sum of £70—i.e., they re-issue them with £30 credited as having been paid up. You will remember that the position in the books was:—Share Capital Account, credit balance 99,900. Forfeited shares credit, balance £60 in one case

and £100 in the other. The entry of the transaction would then be as follows:—Credit Share Capital Account £100, because these shares have again become active capital; debit cash with £70 received on account of these shares; and Dr. Forfeited Shares Account with £30, because this amount has again been credited on the active shares. The result is that in each case the Share Capital Account is again increased to its full value, £500,000, and in case No. 1 there is a credit balance of £30 on Forfeited Shares Account and in case No. 2 a credit balance of £70 on Forfeited Shares Account and a debit balance of £40 on "Calls in Arrear on Forfeited Shares" Account. As the company have now received the whole of the amount unpaid on the re-issued shares they will no longer be entitled to recover the unpaid calls due on them by the original holder at the time of forfeiture, and, therefore, this balance of £40 on "Calls in Arrear on Forfeited Shares" must be wiped out by crediting this account with £40, and debiting £40 to Forfeited Shares Account, thus reducing the balance on this account to £30.

This brings us to the final point to be considered. It will be seen from the foregoing that there is an absolute surplus of £30 on the forfeited shares. The question is, What is to be done with this surplus? It seems to be an accepted axiom in our profession that the sum received on forfeited shares being a capital receipt is not available for dividend, and that it should be transferred to the Reserve Fund, but there is no general rule of law in support of this view. This view is undoubtedly accurate, as before the re-issue of the shares, though I am inclined to question the advisability of transferring to the Reserve Fund, because not infrequently the Reserve Fund is used for the equalisation of dividends, and thus there is the possibility that the transfer will defeat its own object. It appears to me to be the better course to leave it standing to the credit of Forfeited Shares Account in the Balance Sheet, at least until the shares are re-issued. To divide this sum as dividend would be commercially incorrect. It obviously remains part of the paid-up capital until an equivalent sum is received on the re-issue of the shares, and although the company are not liable to the former holders, yet the creditors of the company have undoubtedly a right against it, of which there is no reason why they should be deprived. This procedure would also probably be legally incorrect, judging by the intention of the Legislature as evidenced by Table A before mentioned.

The re-issue of the shares alters the circumstances somewhat, and where (as in the case we have assumed) there is an absolute surplus of capital receipts obtained by issuing the shares with only part of the amount already received credited upon them, I see no reason why such a surplus should not be available for dividend, provided that the articles of the company do not expressly or impliedly prohibit such a course.

## JOURNAL ENTRIES illustrating Cases mentioned.

FORFEITURE.		Dr.	Cr.
		£ s d	£ s d
CASE 1.			
Share Capital Account .. Dr.	100 0 0		
To Sundries—			
Forfeited Shares Account ..		60 0 0	
First Call Account ..		20 0 0	
Second Call Account ..		20 0 0	
Forfeiture of 10 £10 Shares held by A. B., on which £6 per Share has been paid.			
CASE 2.			
Share Capital Account .. Dr.	100 0 0		
To Forfeited Shares Account ..		100 0 0	
Forfeiture of 10 £10 Shares held by A. B., on which £6 per Share has been paid.			
Calls on Forfeited Shares Account Dr.	40 0 0		
To Sundries—			
First Call Account ..		20 0 0	
Second Call Account ..		20 0 0	
Amount of Calls on Forfeited Shares recoverable under Article 40.			
RE-ISSUE.			
CASE 1.			
Sundries .. Dr.			
To Share Capital Account ..		100 0 0	
Cash ..	70 0 0		
Forfeited Shares Account ..	30 0 0		
Re-issue of 10 £10 Forfeited Shares with £3 per Share credited as paid up thereon.			
CASE 2.			
Sundries .. Dr.			
To Share Capital Account ..			
(As above.)			
Forfeited Shares Account .. Dr.	40 0 0		
To Calls in arrear on Forfeited Shares Account ..		40 0 0	
Amount written off as not recoverable, the Shares having been re-issued and the amount unpaid received from the new holders.			

## Profits of a Company earned prior to Incorporation.

The second point to which I desire to briefly direct your attention is suggested by a question which was set at the Final Examination of the Institute, June 1900, which is as follows :—

"A limited company, registered on 31st March 1900, takes over the assets and liabilities of a trading concern as on January 1st 1900. The profits for the six months ending 30th June 1900 amounted to £5,000. How would you deal with this sum in closing the books of the company on the 30th June 1900? State whether you would consider it available for distribution as dividend on the shares, and give your reason."

You will observe that although the company is incorporated on the 31st March it takes over the concern from January 1st, and, therefore, there is included in the six months' profits three months' profits earned prior to the incorporation

of the company. Now it is not legal for a company to distribute as dividend profits earned prior to its incorporation. It is obvious that a company cannot earn profits before it comes into existence, and it is equally obvious that, if it takes over a going concern three months prior to its coming into existence, the profits or losses made during that period *ought to have been* taken into consideration in fixing the purchase price. I use the words "ought to have been" advisedly. It sometimes happens that in the conversion of existing businesses this particular point is overlooked. Especially is there this liability in the case of the conversion of private businesses into private limited companies, where little or no money passes; with the result that the proprietors find themselves deprived of perhaps a considerable portion of their income because the company into which they have formed themselves cannot legally use the whole of the profits for the purpose of dividend, and many peculiar devices, some being very questionable, are resorted to in order to tide over the difficulty. But whether this point is overlooked or not, the law presumes that there is included in the purchase-price a sum in consideration of the profits earned prior to incorporation, and, as such profits have been purchased out of capital receipts, they are not available for the purposes of dividend. Consequently, in our particular case, the whole of the £5,000 is not available for dividend, and the question arises, What proportion is divisible as dividend?

There are three methods of ascertaining this proportion. The first is to ascertain the actual profits up to the date of incorporation. But in most cases this is inconvenient, and, in some, impossible. It would for instance, be very difficult in some cases to ascertain the stock on hand at that particular date, and in others it would be absolutely an impossibility.

The second method is to divide the profits in proportion to the periods of time over which they were earned. This in our case would make £2,500 available for division—i.e., half of the whole profits for the period. This method is applicable to certain businesses, but, generally speaking, is faulty, and does not always give a true result.

The third and best method is to analyse the turnover and ascertain the sales made before and after the date of incorporation and apportion the profits accordingly.

The next point which arises is how to deal with the profit earned prior to the date of incorporation in the Balance Sheet. According to custom there would appear to be three methods of dealing with it, viz. :—

- (1) To credit it to the General Reserve Fund;
- (2) Write it off preliminary expenses or goodwill; and
- (3) Credit it to a special separate Reserve Fund.

The danger of crediting such items to the General Reserve Fund I have already mentioned earlier in the paper. Preliminary expenses should, in the ordinary course of things, be written down out of profits, and therefore, in my opinion, to utilise the amount at our disposal for this purpose would be equivalent to crediting it to Profit and Loss Account, because it would relieve this account of the charge and make the balance available for division correspondingly larger.

To write the amount off Goodwill is perhaps better, though this is open to criticism. If the goodwill is excessive it should be written down out of profits, in which case a similar state of affairs as that mentioned above would arise. If it is not excessive, then there is no need to write it down, and therefore, in this case, to utilise the amount for this purpose would be equivalent to creating a secret reserve.

The last method—viz., to make a separate Reserve item of it, seems to have most to commend it. There is then no danger of it being used for the equalisation of dividends, nor of it relieving the Profit and Loss Account by usurping the place of some proper revenue charge, and, finally, there would be no danger of losing sight of it, as might be the case if it formed a hidden reserve.

The whole of this trouble could, of course, be avoided, and all the difficulties solved, by a provision in the contract of sale that the profits accrued up to the date of incorporation should be excepted from the sale and retained by the vendors.

The same principle of apportionment would, of course, apply in the event of a loss in the first period's working. In this case the position would become somewhat difficult. The company would not be entitled to capitalise the losses accrued prior to incorporation, and, on the other hand, they would not be compelled to charge them against Revenue, though doubtless, if wise counsels prevailed, they would adopt the latter course.

In conclusion, let me state that I am fully aware that most of the matter contained in this paper will be elementary to many of you who are on the right side of your examinations; but I trust that those of you who are still in the throes of your examination studies may find it helpful, and I hope that, when the testing time comes, Fortune may smile on you and crown your efforts with success.

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By Mr. A. F. ROUNTREE.

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It is not my intention this evening to enter into a long discussion of the faults or virtues of the legal side of the Companies Acts, or of the merits of the numerous amend-

ments of the 1900 Act, which are brought forward in *The Accountant* and elsewhere from time to time. I simply wish to focus attention on one or two of the practical points with which we as accountant students are liable to come in contact.

Let us take first the audit of a limited company's accounts. Everyone knows the difference in the positions of the auditor of a public company and the accountant to a private firm. But I should just like to emphasise the change which takes place in the position of the accountant when his client turns his business into, say, a private limited company. Whereas formerly the accountant was responsible solely to his client, and the amount of work he did was regulated by the amount of the fee and by his client's instructions, now he has, as auditor, a distinct legal responsibility, not only to the practically sole shareholder, but also to future outside shareholders who may be induced to subscribe on the strength of his signed Balance Sheets, and to creditors to whom the Balance Sheet may be shown for the purpose of getting more credit or staving off pressure, and who rely on his signature as auditor for its genuineness. He now has certain work to do, irrespective of the amount of the audit fee, and in his audit of the accounts he must not be satisfied simply with the *obiter dicta* of the managing-vendor-shareholder; he must make his own investigations, and verify as much as possible the figures put before him.

Here may I point out that an accountant, in closing off and auditing a set of books, should not think that his most important object is "to make the books balance," without any consideration of the effect of the entries which he makes to accomplish that object. This may appear such an obvious and elementary axiom as not to require any emphasis; but, unfortunately, it is not realised by at any rate all accountants' clerks. For in a recent case with which I had to do the auditor's clerk had come and mechanically checked the Ledger, and though some of the accounts were ruled underneath, and the business was one in which it is the almost invariable rule to make prompt settlements, finding, in some cases, that the debit side exceeded the credit, he had religiously brought down the balance in his neatly coloured ink and treated it as a good debt, although, as a matter of fact, it was the discount on cash paid in settlement of deliveries of goods, and should have been credited to the customer and written off to "Discount and Allowances Account" when the payments were made. The result was that the books balanced to a penny, but the amount of the book debts was inflated to the extent of over £700, which was written off after the accountants had finished.

A second point in the audit of a company's Balance

Sheet to which the accountant should devote his attention is the stock which is said to be on hand at the date of the Balance Sheet. I know that an auditor is not legally responsible for the stock, and rightly so; nor can he be made liable for any fraud or error in the taking of the stock. But, at the same time, if we accountants and our profession of auditing are not to be regarded by the outside public simply as mechanical checking machines, we ought not to be too ready to shield ourselves behind the letter of the law, and be content with checking the additions of the sheets and extensions over, say, £20.

The auditor can always clear himself by seeing that in the Balance Sheet the stock is accompanied by the words, "As certified by the managers, or "by the managing director." Beyond that, however, it is generally possible to verify in a general way the genuineness or existence of the stock which is certified to be on hand from other sources than the books of account, and if the stock consists of a few big lines this could easily be done from the invoices. This would to some extent prevent the auditor from being hoodwinked by the production of Stock Sheets which represented goods in the warehouse not on the genuine stocktaking date, but on a subsequent day previous to the commencement of the audit. It would also prevent the inclusion in the stock of goods the invoices for which are being kept back till after stocktaking.

This brings me to another point—the auditor's certificate and report—which I know has been discussed *ad nauseam* in *The Accountant*, and therefore I apologise for again introducing it. But this, I think, ought to be insisted on—viz., that, if the report is anything more than the usual formality, it ought to be referred to in so many words in the certificate at the foot of the Balance Sheet as to the compliance with all requirements.

I admit that it is undesirable in the interests of the company that the report should be given the same publicity as is given to the Balance Sheet. But there are the creditors to be considered. Supposing a creditor is getting anxious about the state of his account with the company, and to keep him quiet the management show him (in confidence) the last Balance Sheet, with the auditor's certificate, "We certify that all our requirements as auditors have been complied with.—A. B. & Co., Accountants," he naturally concludes that this is a clean bill. But if the certificate had been worded, "Subject to our report of even date, we certify, &c.," he would probably wish to see this report, and, on finding that it drew the attention of the shareholders to the fact (*inter alia*) that several invoices for goods purchased had not been produced, and that no reserve had been made for discounts and allowances on the book debts, the

creditor might not have been so ready to continue the credit which the company was already enjoying.

Apart from auditing, the bulk of the company work which accountants are called upon to do is in connection with the conversion of private concerns into limited companies, the reconstruction of existing companies, and the amalgamation or absorption of two or more companies. In all cases, but more especially in the case of the latter, it is essential that the accountant should carefully consider the draft agreement for sale, or amalgamation, as to the terms on which the concerns are to be taken over and the share capital divided, and should work out what the effect of the proposed arrangement will be on the various parties, so that their exact intentions may be carried out, and any ambiguity avoided which might lead to results altogether different from what was intended. An instance of this ambiguity occurred in one of the questions in the Book-keeping Paper set at the Final Examination in December 1904.

I will read the question:—

"Q. 7.—A. & Co., Lim., and B. & Co., Lim., being pressed by their bankers and others, and obliged to pay off their loans, agree to amalgamate. Their position as to share capital and earnings is thus—

	A. & Co., Lim.	B. & Co., Lim.
Ordinary Shares of £10 each .. ..	£300,000	£100,000
Four per cent. Debentures, authorised		
£300,000 issued .. ..	200,000	Nil
Five per cent. Loans .. ..	20,000	60,000
Reserve Fund invested in the Business	20,000	Nil
	<u>£540,000</u>	<u>£160,000</u>
Together .. ..	£700,000	
Earnings—		
6 per cent. on Shares .. ..	£18,000	£6,000
4 per cent. on Debentures .. ..	8,000	—
5 per cent. on Loans .. ..	1,000	3,000
	<u>£27,000</u>	<u>£9,000</u>
Together .. ..	£36,000	

A. & Co. will create further £100,000 ordinary shares, and issue its £100,000 debentures, buying up B., which will be liquidated. The whole of the expenses, including placing the £100,000 debentures, are fixed at £10,000, and the working capital will be increased by £10,000. No increased profits are anticipated therefrom, but the £36,000 is considered maintainable. The capital will then be £400,000 shares showing 6 per cent. dividend, and £300,000 debentures at 4 per cent.

You are required to say how the further £100,000 ordinary shares should be apportioned and allotted as fully paid to the holders of the shares in A. and B. respectively in such manner that the A. shareholders will receive an advantage of £1,200 per annum over the B. shareholders *in respect thereof*." ("Accountants' Manual," Part I., Vol. X., p. 102.)

If the editor of the "Accountants' Manual" had worked out the effect of his division of the new capital he would have seen that his method of division is wrong, as it gives the "A" shareholders an advantage of £2,400 per annum over the "B" shareholders instead of the £1,200 advantage required by the problem. The correct method of division is to give "A" £10,000 worth of shares and "B" £90,000 worth out of the new issue of 10,000 £10 shares. The ambiguity, of course, is in the last three words "*in respect thereof*," which, obviously, ought never to have been inserted.

There is another point in connection with the formation of private or one-man limited companies which might profitably be discussed; but it opens up such a wide question that a special evening would be required to adequately consider it. I mean the question as to whether any restraint should be placed upon the formation of small one-man concerns, or whether there should be an independent valuation and examination into the genuineness or solvency of the business which is being sold to the company, so as to make it impossible for a man to transfer to a company what is practically an insolvent business, and issue debentures to himself in part payment, thus defeating the claims of creditors when the crash comes. Two glaring cases from the neighbourhood of Shudehill, which have been recently before the Courts, demonstrate the need for some reform in this direction. It is true that any restraint would cause some inconvenience and expense to the great majority of honest traders at the same time as it deterred the small minority of dishonest ones. Some of the leading members of the profession, I believe, hold that the benefits of the Limited Liability Acts to the community have been so great that we must be prepared to put up with the small losses which are suffered through a few dishonest traders making use of the present law to carry out their fraudulent designs, rather than impose any further restrictions which might act as a deterrent to legitimate enterprise.

But surely any advantage, however great, should not be allowed to operate as a temptation to compound irregularity and dishonesty, even though to a small extent; and Chartered Accountants ought to be among the first to agitate for any reform which would tend to greater commercial morality.

I have not gone deeply into any of the points which I have raised, and you must blame your Secretary for his foolhardiness in asking me to inflict this paper upon you. I shall be quite content if it provokes some discussion.

## After-acquired Property of Undischarged Bankrupts.

(From *The Solicitors' Journal*.)

It was recently announced that the President of the Board of Trade had decided to take the necessary steps to secure the appointment of a departmental committee which would be charged with making inquiries into matters to which attention has been drawn by the Associated Chambers of Commerce, and also into other points of bankruptcy law which the Board of Trade felt to be worthy of consideration. It is understood that one of the chief matters which will be submitted to the committee is the absence of any provision in the Bankruptcy Acts for bringing bankruptcies to a close within a reasonable time; and, as incidental to this, the position of bankrupts in regard to property acquired in the course of the bankruptcy ought to be discussed. For the prolongation of the bankruptcy intensifies the inconveniences which result from the present anomalous condition of the law.

Under Section 44 of the Bankruptcy Act, 1883, the property of a bankrupt divisible amongst his creditors comprises "all such property as may belong to or be vested in "the bankrupt at the commencement of the bankruptcy, or "may be acquired by or devolve on him before his discharge"; and under Section 54 the property of the bankrupt vests in the trustee for the time being. *Prima facie* these provisions seem to deprive the bankrupt of all power of dealing with after-acquired property as against the trustee, but under the old bankruptcy law it was felt that this would be a great hardship upon persons dealing in good faith with the bankrupt, and it was held in *Herbert v. Sayer* (5 Q.B. 965) that the title to after-acquired property did not accrue to the trustee at once, but only upon his interference to claim the property, and until such interference the bankrupt could effectively dispose of it. "Otherwise," it was said, "there would be no protection to "persons dealing with an uncertificated bankrupt. Not "only would they acquire no title by purchases from him, "but payments for such purchases, and for all other debts "due to the uncertificated bankrupt, would be invalidated." This view was reconciled with the statutes by treating the bankrupt as the agent of the assignees, and, until they

intervened, his acts in regard to the after-acquired property were valid.

The same construction was placed upon the provisions of the Act of 1883 by the Court of Appeal in *Cohen v. Mitchell* (38 W.R. 551, 25 Q.B.D. 258), and the principle was enunciated by Lord Esher, M.R., in the following terms: "Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bond fide* and for value in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee." Had this been adopted as applying to real and personal property alike, the position of persons dealing with undischarged bankrupts would have been effectually safeguarded. But in *Re New Land Development Association and Gray* (40 W.R. 295, 551; 1892, 2 Ch. 138) Chitty, J., held that the principle did not apply to real estate. He based his decision upon the ground that the case of after-acquired real estate was not before the Court in *Cohen v. Mitchell*, and that there would be conveyancing difficulties if the estate was held to vest first in the bankrupt, and to be then liable to be shifted to the trustee upon any intervention by him either verbal or in writing. In the Court of Appeal the case was decided upon the ground that the title taken under the bankruptcy was not one which could be forced upon a purchaser, but the decision of Chitty, J., appears to have been approved, and Lindley, L.J., said with reference to the doctrine under discussion: "The doctrine has been familiar to us for a good many years, and no doubt there is some sense in it as regards personal property; but I have never yet heard it suggested by anybody that the doctrine had the slightest application to real estate which passes by conveyance and not by delivery."

These decisions still left outstanding the case of after-acquired leasehold property, and this was dealt with, also by Chitty, J., in *Re Clayton and Barclay's Contract* (43 W.R. 549; 1895, 2 Ch. 212). In principle it would seem that the conveyancing difficulties are similar in the case of leaseholds and in the case of freeholds, and Chitty, J., was pressed with this consideration. But the language of the Court of Appeal in *Cohen v. Mitchell* (*supra*) was very wide, and purported to apply the rule there laid down to all after-acquired property, and the learned Judge held that he ought not to make any further infringement upon it. "The language of the Court of Appeal," he said, "is large enough to include all property. It is certainly large enough to include chattel interests in land, and I consider that I ought to apply it to such interests." Another decision in accordance with *Cohen v. Mitchell* was given in *Hunt v. Fripp* (46 W.R. 125; 1898, 1 Ch. 675), though not

in connection with real or leasehold property. It was there held by Byrne, J., that an assignment by a bankrupt of an equitable interest in a trust fund which had devolved upon him after the bankruptcy could be effectually disposed of by him if the trustee had not intervened, provided only that the disposition was *bond fide* on the part of the purchaser; and it was further held that the disposition did not lose the character of *bona fides* because the trustee had not been informed of the acquisition of the property.

It appears, therefore, that persons dealing with bankrupts in respect of their after-acquired property are protected save where the property is real estate. The decision of Chitty, J., in *Re New Land Development Association v. Gray* (*supra*), excluding real estate from this protection, was followed by Farwell, J., in *Bird v. Philpott* (1900, 1 Ch. 822), and an attempt to obtain a contrary decision from Kekewich, J., in *London and County Contracts, Lim. v. Tallack* (51 W.R. 408) failed. It became evident, therefore, that the anomaly could be removed only by legislation, and in 1902 a Bill was introduced by Sir Albert Rollit for this purpose. Clause 1 of the Bill provided that the title of the bankrupt to after-acquired property was to be deemed to have been valid against the trustee in favour of any person deriving title thereto under the bankrupt in good faith and for valuable consideration, without notice that the trustee had intervened and claimed the property, and whether with or without notice of the bankruptcy. In common with other attempts at legislation, however, the Bill made no progress in the late Parliament, and probably the most effective method of dealing with the matter would be to submit it, as we have suggested above, to the consideration of the committee on bankruptcy law which is about to be appointed. The law, as it stands at present, is clearly defective. It recognises that persons dealing with bankrupts in respect of their after-acquired property need protection, but it excludes from that protection one of the most important subjects of property. The ostensible reason is that conveyancing difficulties may arise if freehold property is brought within the protection. But such difficulties are merely technical, and they afford no real ground for limiting the rule. It has been pointed out to us by an esteemed correspondent that the mischief is especially felt in the case of bankrupt builders and land speculators, who can leave the town of their bankruptcy and set up in business elsewhere, and acquire, and sell and mortgage, real estate. But the title of the purchaser or mortgagee, though he may have no notice of the bankruptcy, is of course invalid against the trustee in bankruptcy. A change of name on the part of the bankrupt facilitates his operations, and makes it more difficult for the person dealing with him to protect himself. We hope



that the principle of Sir Albert Rollit's Bill will be incorporated in any proposal for legislation which may emanate from the Bankruptcy Committee.

### The Association of Scottish Chartered Accountants in London.

THE seventh annual dinner of the Association of Scottish Chartered Accountants in London was held on Monday, April 9th, at the Trocadero Restaurant, Piccadilly Circus. Mr. A. Dodds Fairbairn (President of the Association) occupied the chair, and the company included Mr. John Gane (President of the Institute of Chartered Accountants), the Hon. George Colville (Secretary), Mr. Robertson Lawson, Mr. John Mann, Junr., Mr. Nathaniel Spens, Mr. Andrew Whittie, Mr. J. Cragg, Mr. J. Ferguson, Mr. G. A. Riddell, Mr. Andrew Williamson, Mr. A. W. Wyon, Dr. J. M. H. McLeod, Mr. J. A. H. McNair, Mr. Geo. Armstrong, Mr. Chas. A. Bertram, Mr. Edwyn Blumenfeld, Mr. Alex. M. Carstairs, Mr. J. Calder, Mr. W. R. Gaff, Mr. Arnold Gauge, and others.

A pleasant social evening was spent, Mr. Charles Bertram, conjurer, entertaining the company. A number of vocal and instrumental performances were also given.

### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, April 13th, was 169, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 93; Deeds of Arrangement registered, 76. The respective numbers in the corresponding week of last year were: Bankruptcies, 103; Deeds of Arrangement, 96—total, 199; being a decrease of 30. The total number of commercial failures recorded during the 15 weeks of the present year is 2,576; the total number recorded in the corresponding 15 weeks of last year was 2,854, showing a decrease of 278.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, April 13th, was 167. The number in the corresponding week of last year was 152, showing an increase of 15. The total number filed during the 15 weeks of the present year is 2,378; the total number filed in the corresponding 15 weeks of last year was 2,620, showing a decrease of 242.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, April 13th, amounted to £1,102,534, by way of addition to £1,072,081, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,683,790 showing a decrease of £581,256. The total amount registered during the 15 weeks of the present year was £24,493,614 (in addition to the issues in previous years by the same companies), as compared with £25,048,422 for the corresponding 15 weeks in 1905, showing a decrease of £554,808.

### An Inquiry into the Bankruptcy Laws.

A WHOLLY satisfactory system of bankruptcy, says *The Law Journal*, may, perhaps, be counted among the numerous things that lie beyond the reach of the wisdom of Parliament. The system that was established by the Act of 1869 was a dismal failure, and the system by which it was superseded in 1883 has certainly not proved an unqualified success. But another attempt is to be made to approach the goal of perfection. A strong committee, of which Mr. Muir-Mackenzie is chairman, and on which the Bar is represented by Mr. S. T. Evans, K.C., M.P., and the Law Society by Mr. Joseph Addison, has been appointed by the President of the Board of Trade "to inquire into and report upon the effect of the laws in force in the United Kingdom in relation to bankruptcy, deeds of arrangement, and compositions by insolvent debtors with their creditors, and the prevention and punishment of frauds by debtors on their creditors." Among the important points particularly mentioned in the terms of the reference are the investigation of the bankrupt's conduct and the realisation of his estate, the position of debtors who are married women, the rights of trustees in bankruptcy against persons who have honestly dealt with bankrupts in respect of property acquired during the bankruptcy, and the desirability of requiring certain securities now exempt from registration to be registered, and of bringing under official control and audit estates administered by trustees under voluntary arrangements made between insolvent debtors and their creditors. The inquiry covers, it will be seen, a large field—so large, indeed, that we are sorry that the question of the renewal of the practising certificates of bankrupt solicitors should be included in it. This is a matter that has frequently been before Parliament. Lord Alverstone has again introduced into the House of Lords a Bill to empower the Law

Society to refuse to renew the certificates of solicitors who are undischarged bankrupts. The inclusion of the question in the bankruptcy inquiry can only result in delaying a reform which has repeatedly been proved to be necessary in the interests of the public and the profession.

### Attachment of an Executor.

IN abolishing imprisonment for debt, Section 4, Sub-section 3, of the Debtors Act, 1869, excepts "default by a trustee or person acting in a fiduciary character and "ordered to pay by a Court of equity any sum in his possession or under his control." Does a debtor who is appointed an executor of his creditor's will, and proves it, become a person having a sum equal to the amount of the debt in his possession in a fiduciary character? *In re Bourne* decides that this is so. At law the debt would have been extinguished because an executor could not sue himself; but in equity he is held to have paid himself, and therefore to be accountable for the amount of his debt as assets—see "Williams on Executors" (10th edit.), p. 1056. There is a dictum of Vice-Chancellor Malins in *Ex parte Mitcalfe* (49 L.J. Rep. Ch. 347; L.R. 13 Ch.D. 815) that the money is not in his hands in a fiduciary character, but the Court of Appeal have now held in *In re Bourne* that this dictum is not well founded, and that there is power to issue a writ of attachment against the executor under the Debtors Act. There may, however, be cases in which attachment would be a great injustice, and it is fortunate that Lord Justice Romer, in the course of his judgment, indicated in what manner the Court should exercise its discretion. The Court, he said, ought to inquire whether the executor had the money in his possession in substance and in fact. A committal ought not to be ordered if he never had available means for the payment of the debt, nor even if he had sufficient funds in his hands when, being insolvent and knowing that he had other creditors with the same moral right to be paid, he resorted to bankruptcy.

(*The Law Journal.*)

### The Curse of Great Swan Alley.

(*With apologies to the memory of Sims Reeves.*)

Of all the streets I dread the most,  
There's none like Great Swan Alley.  
For there I have to wend my way  
Each year, twice annually;  
There is no building in the world  
That looks more melan—choly,  
Than that which stands in Moorgate Place,  
Abutting Great Swan Alley.

Of all the days I dread the most  
And always shall remember,  
There are three days,—three awful days,  
In May and in November:  
For then with aching head and hands,  
I write contin—u—ally,  
To please the cruel gods who sit  
In state, in Great Swan Alley.

At Dicksee, and the rest, I cram,  
For each examination;  
And every paper handed round  
I scan with expectation;  
Then at the questions which are set  
I gaze mechan—i—cally,  
For I forget all I have learnt  
When I reach Great Swan Alley.

I've heard good-natured people say  
Examiners are mortal;  
But at the Institute they change  
As they pass through the portal:  
To Furies dread, of olden times,  
To me they seem to tally,  
Becoming tainted as they breathe  
The air of Great Swan Alley.

The talk of other fellows there  
Is always most depressing;  
For what the questions asked will be  
They all are vainly guessing.  
And so before the start I try  
My spirits just to rally,  
By pouring down,—I won't say what,—  
Or where,—in Great Swan Alley.

Whilst other fellows find a joy  
In dancing and flirtations,  
I have to stop at home and work  
At Redman's Arbitrations:  
I haven't any time to spend  
With Dolly, May, or Sally,  
Because I must prepare to meet  
My friends (?) in Great Swan Alley.

I'd sooner be a Spanish slave  
Who had to row a galley,  
Than have to sit, and write, and fail  
Each year in Great Swan Alley:  
But such my fate,—and so until  
I pass down Death's grim valley;—  
Thank God, I shan't have then to go  
Again to Great Swan Alley.

THE Americanising of the District Railway has led to many curious results. It is not an unheard of proceeding for, say, an Ealing train to arrive at Earl's Court Station and to have its destination altered to Wimbledon, holders of Ealing tickets being unceremoniously bundled out and Wimbledon passengers being baldly directed to re-enter the cars they have just left. But there are other humorous incidents. A train reaches a station, and the following colloquy takes place: Porter: "What are you?" Conductor: "We're 28." "No, you're not; you're 33." "We can't be 33, or we'd be twenty minutes late." "I tell you you're 33." Conductor resignedly goes to the box of his motorman and shouts, "Bill, we're No. 33—not 28," and then gravely proceeds to tear down the number from the front of the train and to stick up No. 33 in its place. Perhaps the automatic signals would not work if he did not.

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### Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
" 21st " .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th " .. .. .	3%
" 28th " .. .. .	4%
April 5th 1906 .. .. .	3½%

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### COUNTY BOROUGH OF HUDDERSFIELD.

(The Huddersfield Tramways and Improvement Act, 1890.)

### APPOINTMENT OF BOROUGH AUDITOR.

APPLICATIONS are invited from Chartered or Incorporated Accountants in practice for the appointment of Borough Auditor.

The appointment will be for a term of three years from the 31st day of May 1906, at a salary of 150 guineas a year, and will be subject to conditions, prints of which may be obtained from the undersigned.

Applications, endorsed "Borough Auditor," must be in the hands of the undersigned not later than Monday, the 7th May 1906.

J. HENRY FIELD,  
Town Clerk.

Town Hall, Huddersfield.  
26th April 1906.

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### Leading Articles.

#### Bankruptcy Law Amendment.

THE recently appointed Departmental Committee, which we referred to in our issue of the 14th inst., consists of Mr. MONTAGU J. MUIR MACKENZIE, one of the Official Referees (Chairman); Mr. JOSEPH ADDISON, a well-known city solicitor (representing the Law Society); Mr. JOHN BARKER, M.P.; Mr. G. M. CHAMBERLIN, the President of the Association of Trade Protection Societies of the United Kingdom; Mr. SAMUEL T. EVANS, K.C., M.P.; Sir EDWARD W. FITHIAN, representing the Association of Chambers of Commerce; Mr. WILLIAM B. PEAT, F.C.A., representing the Institute of Chartered Accountants; Mr. WILLIAM M. RICHARDSON, representing the United Kingdom Commercial Travellers' Association; and Mr. JOHN SMITH, C.B., late Inspector - General in Bankruptcy; while

Mr. W. T. KAYE, 1 Horse Guards Avenue, S.W., is named as the Secretary.

A commendable and an unusual feature is the small number of persons representing officialism, and it is, perhaps, not too much to regard this as an index of the attitude of the President of the Board towards officialism. Mr. LLOYD GEORGE is, as our readers are doubtless aware, a solicitor, and reading between the lines we should be inclined to hazard the suggestion that the appointment of the Departmental Committee is his reply to the representations which have been made to him by permanent officials in favour of a movement for the compulsory extension of official administration in insolvency cases upon the lines which we indicated in our previous article.

However that may be, there is one thing quite certain, and that is that a Committee consisting almost exclusively of business men is not likely to recommend legislation which will unduly extend the powers of officials against the interests of the general public and members of existing professions.

The points to which the attention of the Committee is especially directed are the investigation of the bankrupt's conduct and the realisation of his estate; the position of debtors who are married women; the right of a bankrupt to discharge, and, in the case of a bankrupt solicitor, to renew his practising certificate; also the rights of trustees in bankruptcy against persons who have honestly dealt with bankrupts in respect of property acquired during the bankruptcy and against persons claiming under settlements when the settlor has become bankrupt. They will also report as to the desirability of requiring certain classes of securities, which are now exempt

from registration, to be registered, and of bringing under official control, and audit, estates administered by trustees under voluntary arrangements made between insolvent debtors and their creditors. It will be observed that of these various points the only one concerning which officialism could be unduly advocated would be the second—namely, the realisation of a bankrupt's estate. An important omission—which, we hope, will not be overlooked by the Committee—is the position of creditors under the second failure of a bankrupt who has not yet obtained his discharge in his first failure. And in connection with what are called voluntary arrangements with creditors, an anomaly which certainly ought to be remedied at the earliest possible opportunity, is the liability of a person indebted to one who has executed a deed of arrangement, who has paid his debt to the trustee under that deed, to pay it a second time to the trustee in bankruptcy should bankruptcy ensue. The law as to after-acquired property also calls for very careful consideration; and if it is to produce any reasonable effect in practice, some arrangement must be made to so modify the Bankruptcy Discharge and Closure Act, 1887, as to enable creditors, if they think fit, to appoint a professional trustee to look after their interests, even in cases where the original trustee has been released and the appointment has, in consequence, vested in the Official Receiver. Everyone who has any experience of such matters must know that there are many cases in which undischarged bankrupts have come into after-acquired property which never finds its way into the pockets of creditors owing to the supine methods of Official Receivers, who make it, one might almost say, a point of honour never to move in any matter

unless they have sufficient funds in hand to indemnify their department against the worst imaginable contingency. This may be a reasonable attitude for Official Receivers to take up—and it is, of course, an excellent thing for professional trustees that they should discharge their functions upon such lines—but, however that may be, it is not by such methods that concealed assets are recovered for the benefit of creditors.

In commenting upon the appointment of the Committee, our contemporary *The Solicitors' Journal* states that "this would lead us to infer that the mercantile community are not wholly satisfied with the Bankruptcy Act, 1883, and the Acts by which it has been amended." One is tempted to wonder what our contemporary has been doing for the last twenty-three years to entertain any doubt whatever upon such a point. If the Bankruptcy Acts were even reasonably satisfactory we may be quite certain that so admittedly imperfect a means as a deed of arrangement between debtor and creditors would never have come into general use. Prior to the passing of the Bankruptcy Act, 1883, such arrangements were only entered into under the most exceptional circumstances, when the creditors were unanimously of opinion that the debtor was entitled to every consideration at their hands, even to the extent of keeping his failure an entire secret from the business world; whereas now no less than 45 per cent. of the failures are annually dealt with outside bankruptcy, and the amount of assets so administered exceeds the total amount dealt with in bankruptcy.

Doubtless however, now, as under the 1869 Act, there are from time to time cases of voluntary arrangements between debtors and creditors which are outside the scope of any

Act whatever, and are kept entirely private. It will be for the Departmental Committee, when considering the exact form of the very necessary amendments to the Deeds of Arrangement Act, 1887, to see how far it is practicable to amend that measure without at the same time defeating the end in view by causing the number of unregistered—and therefore the number of uncontrollable—arrangements to be increased proportionately as the control over trustees under registered deeds becomes more efficient.

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### The Limited Partnership Bill.

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WHEN commenting upon the introduction into Parliament of the Limited Partnership Bill we expressed ourselves sceptical as to whether such an Act would ever prove of value in practice, bearing in mind the fact that the existing provisions enabling a company to carry on business with a limited liability to its shareholders and an unlimited liability to its directors have proved absolutely a dead letter. It would appear, however, that our contemporary *The Law Journal* regards the measure as a useful one; and, that being so, it is of interest to study the article appearing in its issue of the 21st inst. with a view to seeing the grounds upon which this hope is based.

Our contemporary considers that the plan has two obvious merits, in that it enables persons to invest money in a trading partnership with a sense of security which they could not have so long as a loan with participation in profits exposes them—as it does under the existing law—to the risk of unlimited liability; while at the same time, by reserving the unlimited liability of the general partners, the Bill will secure a "steadying influence"

on the management of the business and discourage anything like rash or imprudent speculation. All of this is, of course, mere platitude. The point is not whether it would have a steadying effect upon directors to make their liability unlimited, but whether there are any reasonable grounds for supposing that anyone would become a director under such onerous conditions, when by registration under the Companies Acts he can equally well become a director without incurring any greater risk than those shareholders who are merely sleeping partners in the venture. It would almost appear as though our contemporary appreciated this point, for it states that the interesting thing will be to see which of the two—the limited partnership, or the private company—will find most favour with the commercial world; and it adds that while the immunity afforded by the Companies Acts is indisputably a strong recommendation to directors, shareholders, and promoters, the very reason which makes it so makes it the reverse of a recommendation to the public as represented by general creditors. This is again, it seems to us, little more than a truism. The position of a creditor of an unlimited company must in any event be somewhat better than would be the case were the company registered with limited liability; and upon the principle that half a loaf is better than no bread, a company registered with unlimited liability so far as certain of its proprietors are concerned is better than one where the liability of all proprietors is limited. Up to the present, however, “the public, as represented by general creditors”, has shown not the least disinclination to give credit to a limited company, and there is consequently absolutely no inducement for

anyone to register with unlimited liability either in whole or in part, nor does it seem to show that there is any reasonable ground for supposing that such registrations might be expected in the future were the Limited Partnership Bill to be passed.

The only chance, as it seems to us, of making this Bill—if passed—anything more living than Sections 4 to 8 of the Companies Act, 1867 (cited in error as the Companies Act, 1877, by our contemporary), would be if at the same time provision were to be made restricting the operations of the Companies Acts to undertakings of sufficient importance to be *bonâ fide* regarded as public companies. The question is one that would no doubt have to be very carefully considered in all its bearings before any definite action was taken, but it certainly seems to us that all legitimate claims of a private company would be met by granting power to register as a limited partnership. The genuine private company is, or should be, in all cases managed by persons who give practically the whole of their time to its management and have a very substantial pecuniary interest in the undertaking. There seems to be no very obvious reason why such persons should be entitled to carry on a business which for all practical purposes is *their* business with limited liability; still less reason is there, in our view, why they should be entitled not merely to all the benefits of public companies, but should also be immune from the provisions inserted in the Companies Act, 1900, for the protection of investors. The main argument in favour of allowing limited liability at all is that upon this principle many prosperous and useful undertakings can be founded which could not by any other means have been brought into existence. There is

no such argument in favour of allowing a tradesman, a merchant, or even a manufacturer, to carry on his business without becoming fully responsible for the consequences of his manner of so doing; still less reason is there for allowing him to do so in a manner which it is admittedly undesirable should be pursued by larger undertakings. A concession of limited liability is necessary, of course, to enable large sums to be subscribed as capital for the carrying through of huge ventures, but there is, it seems to us, no reason why anyone should be allowed to carry on business upon quite a small scale with the benefit of limited liability. We trust that this aspect of the matter may be duly considered before the Bill now under consideration becomes law, as, we understand, will very likely be the case this session; but, however that may be, its one chance of being ever utilised in practice is, it seems to us, if it be made compulsory in the case of the so-called private limited company.

### Secret Reserves and Panics.

THE most powerful argument put forward in favour of Secret Reserves is unquestionably that their existence enables not merely dividends, but also declared profits, to be equalised, thus tending to steady the market price of shares in times of exceptional depression or loss. Whatever views may be held as to the desirability of Secret Reserves *per se*, this argument is usually accepted as a statement of fact, and that being so it will, we think, not be without interest if we consider how far the existence of a Secret Reserve is calculated to steady the market price of shares in times of exceptional loss, or even panic.

The losses sustained by the leading British insurance companies as a result of the recent deplorable earthquake in San Francisco affords us an opportunity of gauging to what extent (if at all) Secret Reserves have such a steadying effect upon prices. It is doubtless as yet too early to form even an approximate estimate of the losses sustained or of the claims that will eventually have to be met by British insurance companies; but inasmuch as it is current estimates of losses, rather than what may at some future date be ascertained to be the true losses, which affect current prices, it is, we think, sufficient for our purpose to adopt the statements of a contemporary, which place the losses of certain of the leading companies as follows —

Commercial Union .. .. .	2 millions
Liverpool and London and Globe..	4 ..
London Assurance .. .. .	3 ..
London and Lancashire .. .. .	3½ ..
North British and Mercantile .. .. .	2 ..
Northern .. .. .	3 ..
Royal .. .. .	3½ ..
Royal Exchange .. .. .	2½ ..
Sun .. .. .	2 ..

These are the companies whose losses are estimated by our contemporary at two millions and upwards. It may well be questioned whether in point of fact they will even remotely approach these figures; but still, such as they are, they represent the losses attributed to the various companies named.

At the end of last month the middle prices of these companies' shares were as follows:—

Commercial Union .. .. .	89
Liverpool and London and Globe .. .. .	50½
London Assurance .. .. .	75
London and Lancashire .. .. .	34
North British and Mercantile .. .. .	42½
Northern .. .. .	84
Royal .. .. .	56½
Royal Exchange .. .. .	319½
Sun .. .. .	162



As a result of the news which reached London on the morning of the 19th inst. there was a considerable fall in prices, and we believe that the following represent the lowest figures reached:—

Commercial Union .. .. .	79
Liverpool and London and Globe ..	44½
London Assurance .. .. .	56
London and Lancashire.. .. .	25
North British and Mercantile .. ..	38
Northern .. .. .	83½
Royal .. .. .	47
Royal Exchange .. .. .	305

There has been some recovery since, but the point to which we wish to draw special attention is that the existence of the enormous Secret Reserves which every first-class insurance company maintains does not appear to have produced its expected effect of steadying prices in moments of panic.

At the same time it is important not to overlook the fact that with insurance companies there is very naturally a greater desire upon the part of investors to sell in times of panic than would be the case in connection with more ordinary undertakings, on account of the very heavy uncalled liability upon all insurance companies' shares. The extent of this liability may be gathered from the following table:—

Name of Company	Nominal Capital	Denomination of Shares	Paid up
Commercial Union .. .. .	£500,000	£50	£5
Liverpool and London and Globe .. .. .	12,282,000	100	2
London Assurance .. .. .	71,724	25	12½
London and Lancashire .. .. .	910,000	25	2½
North British and Mercantile..	440,000	25	6½
Northern .. .. .	300,000	100	10
Royal .. .. .	870,860	20	3
Royal Exchange .. .. .	689,220	100	100
Sun .. .. .	64,000	10	7½

There can, we think, be little question that the anxiety of certain investors to get rid of their holdings without waiting for any reliable information as to the extent of losses involved has been due to panic, caused by their appreciating, perhaps for the first time, that there was a serious uncalled liability in connection

with their holding. In the days when limited liability was looked at askance it was, no doubt, necessary that all concerns claiming to be regarded as really sound should have a considerable reserve of uncalled capital to fall back upon in case of need, but at the present time the business world has doubtless outgrown this frame of mind. As matters now stand, it seems to us that the existence of a heavy uncalled liability is a disturbing rather than a reassuring factor in times of panic. Be that as it may, it is clear that Secret Reserves, of themselves, are insufficient to steady prices even when most well-informed persons feel confident that the loss sustained is not in any case likely to so seriously tax the reserves of the companies concerned as to cause them to forego their customary dividends even for a single year. And the question is thus well worth considering, whether this somewhat unexpected position of affairs is due to the failure of the Secret Reserve to fulfil what we may fairly take to be the object of its existence, or whether it is merely due to the fact that its steadying power is not sufficiently great to overcome the disturbing effect of the partly paid-up share with a heavy uncalled liability.

### Some Legal Terms.—VII.

#### The Courts of Law.—The Civil Courts.

[By OUR LEGAL CONTRIBUTOR.]

WE now come to the second main head of this subject—viz., the "Civil Courts." In dealing with these I shall, as in the case of the "Criminal Courts," subdivide them into two groups—viz., "Courts of Superior Jurisdiction," or, shortly, "Superior Courts," and "Courts of Inferior Jurisdiction," or "Inferior Courts."

In the former I shall place the House of Lords, the Judicial Committee of the Privy Council, and the Supreme Court of Judicature; in the latter, all other Courts exercising civil jurisdiction.

Of the Superior Courts the House of Lords and the Judicial Committee of the Privy Council are Appeal Courts pure and simple. To the former lie all *final* appeals from the Court of Appeal in England, and from those Scotch and Irish Courts from which an appeal lay to that House at the date of the Appellate Jurisdiction Act of 1876. The Judicial Committee of the Privy Council hears *final* appeals from the Colonies and India, and also appeals in Ecclesiastical, Admiralty, and Lunacy matters.

The House of Lords as a final Court of Appeal differs in its composition from that of the Court of the Lord High Steward, to which I alluded in the preceding article, and is rather in the nature of a Committee of the House consisting of not less than three "Lords of Appeal." A "Lord of Appeal" may be either (1) the Lord Chancellor of Great Britain for the time being; (2) a Lord of Appeal in Ordinary, the number of whom is limited to four; (3) a Peer of Parliament who has held high judicial office.

The Judicial Committee of the Privy Council consists of the Lord President, such members of the Privy Council as hold or have held high judicial office, the Lords Justices of Appeal, and two other persons being Privy Councillors whom the Sovereign may appoint. Besides these there may be one or two paid members who have held the office of Judge in the East Indies.

The Supreme Court of Judicature consists of two branches—viz., the "Court of Appeal" and the "High Court of Justice." To the Court of Appeal lie appeals and applications for new trials in the case of actions tried in the High Court. Appeals also lie to it in Bankruptcy cases and in matters of Lunacy, and in cases arising in the Chancery Courts of the Counties Palatine of Lancaster and Durham. The Court of Appeal is composed of four *ex officio* Judges—viz., the Lord Chancellor (who is President), the Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce, and

Admiralty Division, and of five ordinary Judges with the title of "Lord Justices of Appeal." It generally sits in two divisions of three Judges, but for certain purposes two Judges are sufficient.

The other branch of the Supreme Court of Judicature, viz., the High Court of Justice, is sub-divided into three divisions—viz., the King's Bench Division, the Chancery Division, and the Probate, Divorce, and Admiralty Division. The first of these consists of fifteen Judges—viz., the Lord Chief Justice of England, and fourteen "*puisne*" or subordinate Judges; the second, of the Lord Chancellor as President, and six other Judges; and the third, of the President and one other Judge. The Courts of the King's Bench Division are very frequently spoken of as "Common Law" Courts, as distinguished from those of the Chancery Division, which are known as "Chancery" Courts, or Courts of "Equity." We have when considering the subject of Common Law and Equity alluded to the original distinction between these Courts, and have seen that although such distinction no longer now exists, yet that for the sake of greater convenience certain classes of action are still assigned to the Chancery Division. Accordingly, roughly speaking, we may say that all actions not falling within one of those classes will be brought in the King's Bench Division, unless, of course, they are in the nature of Probate, Divorce, and Admiralty proceedings, when they will be taken in their proper division. From an accountant's point of view perhaps the most important matters assigned to the Chancery Division are Company matters, and more particularly the Winding-up of Companies and Debenture-holders' Actions.

The Bankruptcy Court is now united with the Supreme Court, and its jurisdiction transferred to the King's Bench Division of the High Court.

There now remain for our consideration only the "Inferior Courts of Civil Jurisdiction," or Courts exercising a civil jurisdiction limited either locally or as to the amount claimable, or in respect of both. The most important of these are the "County Courts." For the purpose of these Courts England is divided into fifty-four "Circuits," excluding the City of

London, which has its own County Court, known as the "City of London Court." Each of the circuits has a Judge allotted to it, save in one or two instances, where there are two Judges. The circuits include a varying number of "Districts," each with its "Registrar" and "High Bailiff." The jurisdiction of these Courts is limited locally to the place of residence of the defendant, by which I mean that a County Court can only entertain a claim against a defendant who either lives or carries on business within a district of that Court at the time of the commencement of the action, or, by leave of the Judge or Registrar, against a defendant who *has* so lived or carried on business within six calendar months next before that date. As regards amount, the limit may now, for all practical purposes, be stated to be £100 in Common Law and £500 in Equitable actions. It must not, however, be forgotten that no action for libel, slander, seduction, or breach of promise of marriage can be brought in the County Court, unless the parties in writing consent, or the action is remitted from the High Court.

The Bankruptcy jurisdiction of the County Court, where it has it, is, substituting "debtor" for "defendant," subject to the same local restriction as in the case of actions. The Metropolitan County Courts have no bankruptcy jurisdiction. Upon County Courts exercising bankruptcy jurisdiction there is also conferred authority in company winding-up, where the registered office of the company is within the jurisdiction of such a Court and the paid-up capital does not exceed £10,000.

Certain County Courts held in the neighbourhood of the sea have a limited Admiralty jurisdiction, and a further important class of cases assigned to County Courts generally are those which arise between employers and workmen, either under the Employers' Liability Act of 1880 or the Workmen's Compensation Act, 1897.

County Court actions are for the most part tried before the Judge, or Registrar, without a jury, but a jury may be required by either party where the amount claimed exceeds £5, and the action is not of an Equitable nature. The number of the County Court jury is eight.

As regards appeals from County Courts, these, save in cases arising under the Workmen's Compensation Act, are heard by what is known as a "Divisional Court" of the High Court of Justice. Such a Court may consist of two or more Judges of the High Court sitting together, or, as it is sometimes technically called, "in banc," but, as a matter of fact, the Court is at present always composed of three Judges, the Lord Chief Justice presiding. The decision of the Divisional Court is final in County Court appeals, unless leave is given to appeal to the Court of Appeal.

Before concluding I must not omit to mention the limited *civil* jurisdiction exercised in some instances by Petty Sessional and Police Courts. Sums of a more or less small amount have by the provisions of various statutes been made recoverable therein as "Civil debts" under an order of the Justices or Magistrate, with an example of which, arising under the Merchant Shipping Act, 1894, and relating to the recovery of seamen's "wages" where the claim does not exceed £50, all readers of "Stevens" will be familiar.

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### Weekly Notes.

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**Roosevelt on Red Tape.** Some twelve months ago President Roosevelt appointed a commission to

study the business methods of the various departments of the Government, with a view to systematising the work and reducing the amount of "red tape" to a minimum. At a recent meeting of the members of the commission the President got rid of some very healthy remarks on the subject under review, which might well be borne in mind on this side:—

"While I think there is comparatively little corruption in the national governmental service, and while that little I intend to cut out or have cut out through agencies other than yours, it yet remains true that there is a good deal of duplication of work, a good deal of clumsiness of work, and, above all, the inevitable tendency toward mere bureaucratic methods, against which every Government official should be perpetually on his guard—the tendency to regard not the case, but the papers in the case as the all important matter with which to deal, and to feel a proud sense of duty performed if all those papers are appropriately docketed and referred and minutes made

about them, and then referred back, without regard to what has become of the real fact at issue.

"I do not want a diagnosis of the case. I want a recommendation how to reach the case; I do not want merely to know that things are bad; I want to know what is bad and what is to be done to make it better; so that if legislation is necessary I can recommend it; so that if, as I hope will be true in the enormous majority of cases, the matter can be reached by executive regulation, I can see that that regulation is issued. I want to say right here, gentlemen, that I shall value the reports that I receive largely in proportion as they do not call for legislation. There is nothing easier than to draw up an elaborate minute to show how well things would go on if someone else did something different."

**Income-Tax Assessments.** Some very interesting figures are given in a Return just issued by the Treasury relating to the taxes under Schedules D and E during the fiscal year 1903-4.

SCHEDULE D.		£
471,500 individuals assessed on	.. ..	128,290,300
58,600 firms do.	.. ..	88,576,200
30,400 public companies do.	.. ..	245,484,000
9,800 local authorities do.	.. ..	17,314,200

There were only 19 persons taxed for incomes amounting to £50,000 and upwards, but 113 firms, 822 companies, and 46 authorities, paid on that assessment. There were 370,400 assessments under Schedule E, and the gross assessment was £86,079,200. The total sum contributed by both schedules amounted to £22,156,600, a very respectable proportion of the aggregate collection (£33,044,000).

**Sweet are the Uses of Advertisement.** *The Financial News* protests very strongly against the following paragraph, which is taken from a circular, the point being that the brokers through whom the business is done can hardly be unaware of the methods by which it is obtained:—

"We wish you to clearly understand that we ourselves are not brokers or dealers. We are certificated accountants, and employed chiefly by official Stock Exchange brokers, and our twenty years of professional experience, long training, and standing in such capacity, and our hourly presence 'on the spot' enables us to give the very best expert advice in, and to efficiently manage all matters connected with, stock and share transactions. We may add here that official brokers do not give advice to their clients in marginal investments—advice in such is not their business."

Our contemporary goes on to say that while the rule against "house" advertising is very absurd and

antiquated, it is the rule nevertheless, and should therefore be observed. For our own part we should like to know what a "certificated" accountant really is. These adjectives are a little bewildering at times!

**The Appointment of Company Auditors.** The Council of the Birmingham Chamber of Commerce has passed a resolution in favour of amendments of the Companies Acts, as follows:—

(1) There should be a provision that notice of the nomination of an auditor or auditors other than the retiring auditor or auditors must be given to the company not less than fourteen days before the annual general meeting and included in the notice convening the meeting.

(2) The auditor or auditors named in the prospectus of a company should be, *ipso facto*, the auditor or auditors of a company up to the first annual general meeting, otherwise the first auditor or auditors of the company to be appointed by the directors.

(3) Where there has been an offer of shares to the public, one at least of the auditors should be a professional accountant.

A copy of the resolution has been forwarded to the President of the Board of Trade, and acknowledged on his behalf with an intimation that the suggestions will receive consideration. There can, of course, be no doubt as to the desirability of the amendments referred to, but the points are by no means new, and were, indeed, all more or less fully discussed during the years 1894-1900, during which various Committees were inquiring into the necessary alterations of the then existing law, which eventually led up to the 1900 Act. It is, and we presume will always remain, a mystery how any such obviously desirable clauses should have escaped the attention of these Committees.

**Imprisonment for Debt.** A recently issued return shows that during the year 1904 no less than 107,625 persons were received in prison in default of payment of some fine inflicted for a more or less trivial offence. In the year 1894 the corresponding figure was 81,349. There is thus an increase of considerably over 25 per cent., but almost a corresponding increase is observable in the total number of persons sentenced to pay fines. Apart from the question of the desirability of the State paying for the maintenance of persons who are not disposed to pay such fine as may have been levied against them for an offence sufficiently insignificant to be so punished, it may be pointed out that wherever imprisonment is the result of inability to

pay it amounts to neither more nor less than imprisonment for debt. To these figures must, however, be added a total of 19,217 persons actually committed to prison for debt during the year 1904. This figure is sufficiently startling in itself, but is the more so when it is borne in mind that the total has steadily increased during each of the past six years, and exceeds by 50 per cent. the total in 1899. The economic waste involved would appear to be too obvious to be worth drawing attention to but for the fact that it seems in some unaccountable way to be lost sight of.

**Distress and Hire-Purchase Agreements.** We understand that certain houses interested in the hire-purchase business are taking steps to bring before Parliament a Bill to amend the law of distress with a view to excepting goods held under hire-purchase agreements from liability to distress for rent. There is no doubt something to be said in favour of the statement that traders dealing under such agreements are often obliged to themselves seize their goods for default in order to avoid losing them altogether when the hirer has allowed the rent of his premises to get into arrear. But, from the point of view of the landlord, it certainly does not appear to be very equitable that any such exception should be made, inasmuch as he has practically no means of distinguishing between goods that are the property of his tenant and goods held under a hire-purchase agreement. The furnishing houses are aware, on the other hand, that under the existing law rent must in any event be paid, and the extent of their possible losses is in all cases limited to the amount of rent in arrear for the time being, which in case of need they could pay themselves to avoid a distress.

**London County Council Tramways.** At a recent meeting of the London County Council the proposal to extend the Aldwych-Islington tramways to Highbury Station, at a cost of £46,500, was adopted, but not without a somewhat heated discussion. It was pointed out by one Councillor that this very expenditure was not included in the estimates considered only a week previously, thus showing how little control the Council really had over its own capital expenditure.

**Incorporated Accountants.** A correspondent has forwarded us a copy of a document as showing how members of the London Association of Accountants

describe themselves. The member in question, who apparently is a clerk employed in a brewery, describes himself as an "Incorporated Accountant (L.A.)." It is, of course, one of the questions which has yet to be argued in the pending action whether this description is too near the term "Incorporated Accountant," employed by most members of the Society of Accountants and Auditors, to be permitted. Pending the decision of the Court, we naturally can express no opinion upon the matter, one way or the other.

**The Lancashire and Yorkshire Accident Insurance Co., Lim.** The 28th Annual Report and Accounts of the Lancashire and Yorkshire Accident Insurance Co., Lim., for the year ended 31st March last have now been issued, and will be submitted at the general meeting of the company to be held on the 4th prox. The Revenue Account shows a net premium income of £51,387, and a credit balance of £10,081, which, added to the total Reserve Funds, brings these up to £71,329. The Investments, which appear in the Balance Sheet at £102,209, are stated to be at cost, but no indication is given as to their present value, and the auditors' report, which is presumably embodied in their certificate, is equally silent upon the point. Doubtless the ample Reserve Funds are sufficient to provide for any depreciation that may have taken place, as well as for all unexpired risks, but in the case of insurance companies we consider it undesirable that investments should be stated at a figure exceeding their aggregate market value without the amount of such excess being clearly stated. It may, of course, be that in the case of this company the present value of its investments exceeds their cost, but such a position is at the present time so unusual that there ought not to be any ambiguity with regard to the point.

**Debentures and Income Tax.** The question raised by our correspondent "T. E. A." last week is one which may somewhat frequently arise in practice, and it is therefore perhaps worthy of more extended consideration than we were able to give it in the form of a foot-note. In the ordinary course of events—that is to say, subject to any special conditions that may have been attached to the issue—interest on debentures continues to run up to the date of actual repayment; but in the event of the assets not proving sufficient to pay debenture-holders' claims in respect of both principal and interest, such payments as may be made generally

out of the funds available would be properly treated as a return of capital, and in consequence income-tax would not be payable thereon, nor on any portion of the sum referred to. Sometimes, however, if the receivership goes on for an extended period, an interim payment is made to debenture-holders as representing interest. It is the duty of the receiver to deduct income-tax from any payment so made, and to account therefor to the Inland Revenue authorities, or if the payment out is made by the Court the same procedure would be pursued. If at a later stage it transpired that there were not sufficient assets to meet the claims of debenture-holders in full, we do not think that any individual debenture-holder could sustain a claim for the repayment of income-tax overpaid on the ground that the interim distribution made as interest was in point of fact a payment on account of capital. The determining factor would, we think, be whether the payment, when made, was made as a payment of interest or of capital, and we do not think that anything which subsequently transpired would modify the matter.

**The Postage of Foreign Letters.** It is perhaps worth while bearing in mind that letters from this country addressed to France or Germany need only be stamped 2½d. provided they do not weigh more than 15 grams. This weight exceeds by approximately 5 per cent. the half-ounce, which is ordinarily regarded as the maximum weight for such letters, and it is thus quite possible that letters may be needlessly over-stamped if it be overlooked that for the purposes of letters to be sent to France and Germany metric weights are used.

**Defalcations and Lay Audits.** It is stated by a contemporary that the secretary of a friendly society embracing among its members a large number of civil servants has absconded, and that securities to the value of nearly £30,000 are missing. It is added that the operations of this secretary were under the control of a board of four directors, a solicitor, and two auditors chosen from the members, who, until his disappearance, had no reason to suspect that everything connected with the secretary's affairs was not in perfect order. This is, of course, the normal state of affairs when irregularities come to light in connection with the accounts of a friendly society, and it is doubtless a condition that will continue so long as these societies' accounts are allowed to be audited by their own members instead of by properly qualified accountants. It is,

however, characteristic of the methods of our Legislature that while this somewhat elementary point was duly appreciated in connection with building societies in 1894, no steps have yet been taken to provide a similar safeguard in connection with any other kind of undertaking.

**The Accounts of Local Authorities.** The letter which appeared in our last issue signed "Fellow of the Institute of Municipal Treasurers and Accountants," throws an interesting sidelight upon official methods of stating the accounts of trading undertakings, which clearly shows (if indeed any demonstration was needed) the necessity for the inquiry in progress before the Departmental Committee recently appointed by the President of the Local Government Board. To some it may appear to be a matter of no consequence whether accounts are framed upon the Cash basis or the Revenue basis, but when—as in the case cited—it can be shown that by this means a deficiency which ought to be borne out of the current rate can, by keeping the accounts upon a cash basis, be postponed, and thus thrown upon a later rate, it is to be hoped that even those who know little or nothing about accounts—and, therefore, care as little—will appreciate that the proper treatment of such matters may make a very material difference to individuals, for of course it goes without saying that the ratepayers of any local authority are a constantly changing body. When the law requires any particular item of expenditure to be charged against current rates it ought not to be possible, by the adoption of an antiquated or inaccurate system of accounts, to throw that charge upon other persons without the illegality being automatically made apparent. Incidentally, the mere fact that a district auditor should actually require accounts to be framed in so improper a manner shows beyond all question the futility of expecting any Government Department to deal with such matters upon proper and businesslike lines.

**American Life Offices and British Policy-holders.** At a meeting of the Committee of the British policy-holders of the Mutual Life Assurance Company of New York, held on the 20th inst., a Sub-Committee was appointed with instructions to communicate at once with the British policy-holders and secure their support, and also with authority to communicate with the representatives of the company and others as it might deem necessary. The Sub-Committee consisted

of Lord Northcliffe, Lord Armstrong, Lord St. Oswald, Mr. J. S. Harmood-Banner, F.C.A., M.P., Mr. Robertson Lawson, C.A., Mr. J. H. Seaverns, M.P., Mr. W. H. A. Wharton, J.P., Mr. Ben Haworth Booth, J.P., and Mr. Barclay J. Baron, with power to add to their number.

### Women and Figures.

The *Chicago Inter-Ocean*, discussing a statement made by a well-known principal of a girls' high school in Brooklyn, to the effect that women are usually not good at mathematics, gives the following amusing instance of a requisition made by a wife to her husband, as being quite typical:—

I will need this week:  
 For the table, not counting everything, \$14.36.  
 Call it .. .. . \$20 00  
 Suit for Tommy; will do the best I can, \$6.75.  
 Call it .. .. . 10 00  
 Must have for Laundry, I think, \$3.25. Call it 4 00  
 Other things for table, except Meat, \$4.50.  
 Call it .. .. . 6 00  
 Dress for Kate; saw bargain advertised; \$5.99.  
 Call it .. .. . 6 50  
 Plumber has been here twice .. .. . 7 80  
 You forgot the paper bill .. .. . 2 00  
 Miss Jones, two days' sewing, at \$1.25. Call it 3 50  
 Having Edward's Bicycle repaired; it isn't worth it .. .. . 4 00  
 Other things for table; I am forgetting some things .. .. . 3 50  
 My hat you said I could have .. .. . 10 00  
 The coal man was in again .. .. . 25 00  
 Club Dues (you promised them a month ago) .. 2 00  
 Meat for table; I think I'll need \$5.68. Call it 7 00  
 Girl's Wages; \$1 back from last week .. .. . 6 00  
 I can't remember everything. Call it .. .. . 4 80  
 I didn't think it would be so much .. .. \$112 10  
 Can you let me have \$40? I'll put some of these things off.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### The Institute and its Educational Work.

*(To the Editor of The Accountant.)*

SIR,—In the early part of last year the writer ventured to lay before a prominent member of the

Council the proposal that the Council should organise periodical meetings of the members of the Institute for the consideration and discussion of matters of professional and public interest.

The proposal was received kindly, with the assurance that "the matter would be mentioned in one or two "quarters where it would be likely to receive favourable consideration."

The only further encouragement of the proposal that has been experienced from that day to this has arisen from a perusal of the report of the speech made by Mr. G. Walter Knox, B.Sc., F.C.A., at the annual dinner of the London Chartered Accountant Students Society, held on 30th November 1905.

Mr. Knox then threw out "a suggestion as to whether "the time had not arrived for the formation of a "London Institute" and remarked that such an Institute "would be an auxiliary and a help to the "Students' Society; it would establish and continue "the *esprit de corps* which there ought to be amongst "us all in London as Chartered Accountants, and it "would be a medium of reference by the Council of "the Institute with regard to London practice and "London members."

The Charter of the Institute states that the Societies desiring incorporation "aim at the elevation of the "profession of public accountants as a whole, and the "promotion of their efficiency and usefulness . . . "by setting up a high standard of professional and "general education and knowledge, and otherwise."

That the Council has continued to keep these aims before it is evidenced by the high standard of examinations set up, and by the practical encouragement given to the various Students' Societies in their educational work. But the Council is also trustee for the "standard of professional and general education and knowledge, and otherwise" of those who, after they have been admitted into membership, carry on the profession of public accountant.

From time to time important matters of principle arise, owing, it may be, to decisions in the Courts, or, again, clauses in Acts of Parliament affecting the duties of auditors may have to be interpreted, and, failing any better lead, members have individually to decide for themselves.

The result is that there is a wide diversity of practice, as instanced by the question of the interpretation of the clause in the Companies Act, 1900, dealing with the auditor's report to the shareholders.

Such questions as "The Treatment of Depreciation in Municipal Accounts," "The Divisible Profits of Limited Liability Companies," "The Forms of Balance Sheets and Accounts of certain undertakings as prescribed by statute," are fit and proper questions for discussion, and though no one would contend that unanimity of opinion would be the outcome of discussion, yet the rubbing together of arguments and opinions could not fail to be instructive and of benefit to the profession generally.

Another substantial gain would be that the Council of the Institute would, through the medium of such meetings, be in a stronger position than it is at present to voice the opinions of the profession on proposed amendments of such Acts as the Bankruptcy Acts and Companies Acts, the Income Tax Acts, or the creation of such a Bill as the Public Trustee Bill.

Almost every professional Institute except our own holds these periodical meetings, with the result that uniformity of practice is promoted, and the status of that profession is raised in the eyes of the public.

The periodical conferences of the Institute hold quite a place of their own, and are held at too long intervals and have too little time allotted for discussion to be looked upon as taking the place of what is here proposed.

The Student Societies exist primarily for the benefit of those who have not yet passed their Final Examination. There is an undoubted tendency to overlook this, and for lecturers to succumb to the temptation of addressing themselves to the general body of practitioners and others through the medium of these meetings as reported in the press.

This tendency, though the natural outcome of the absence of other opportunities to address themselves to their professional *confrères*, is not one to be encouraged in the interests of the Student Societies.

Mr. Knox is apparently in favour of a separate institute of London accountants, but it is the object of this letter to advance reasons in support of the proposal that the Institute itself through its Council is the right body to organise these meetings.

It will be said that it would be difficult to secure a good attendance at such meetings, but this objection can only be substantiated by a fair trial.

It would be strange, indeed, for an Institute having in London alone more than one thousand practising members to evince so little professional *esprit de corps*.

I am, Sir, yours faithfully,

F. W. LE BLOUNT LEAN.

21st April 1906.

### Profits of a Company earned prior to Incorporation.

(To the Editor of *The Accountant*.)

SIR,—In discussing the above point as affecting companies formed for the purpose of taking over the business of a trading concern, Mr. W. O. Buxton, in a very interesting paper read by him at Manchester on the 26th ult., and reported in your issue of 21st April, said: "It is not legal for a company to distribute as dividend profits earned *prior to incorporation*." Professor Dicksee, in "Advanced Accounting," says: "Any 'profits arising between the date of sale and the date 'when the company is *entitled to commence business* must be capitalised.' The date of incorporation of a company and the date at which it is entitled to commence business are fixed by the Companies Act, 1900, Sections 1 and 6 respectively. It is conceivable that there may be a very considerable interval between these two dates, and in such a case the question of dealing with any profit earned during this interval arises. Must such profit be capitalised, or may it legally be distributed in dividend?"

Professor Dicksee, as will be seen from the above quoted extract, says that such profit must be capitalised. Mr. S. S. Dawson mentions the point in his invaluable "Compendium" but does not lay down any hard and fast rule.

It would be interesting to have the views of yourself and any readers of *The Accountant* on this point, for there appears to be some doubt about what seems to me to be a rather important matter.

I am, yours faithfully,

ILARDAM.

### Income Tax Iniquities.

(To the Editor of *The Accountant*.)

SIR,—Some five years ago a debtor of a limited company being unable to pay his debt to them handed them over his business, the company agreeing to take over all the assets and discharge all the liabilities; the liabilities, including the above debt, exceeded the assets.

The debtor further entered into an agreement to serve the company at a fixed salary and a commission, such commission, when any earned, to be applied in reduction of the balance of the original debt, but his liability for this was limited to the commissions he earned.

In the company's income-tax return the commission for the past year was debited to Commission Account,



and applied in reduction of the debt; but the Surveyor refuses to allow this, contending that as the company took over the business they are now reducing a capital item.

Perhaps some of your readers will kindly favour me with an expression of their opinions on the above.

24th April 1906.

SCRUTATOR.

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## The Birmingham Chartered Accountant Students' Society.

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PRESIDENTIAL ADDRESS.

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### The Outlook of Accountancy.

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By ERIC M. CARTER, F.C.A.

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AN address given to the members of the above Society on 10th April. Professor W. J. Ashley, of the Birmingham University, supported Mr. Carter, and amongst others present were Messrs. Allen Edwards, W. E. Rayner, P. F. Barker, and A. K. Edwards (Hon. Secretary).

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I have chosen as the subject of the address to which you are asked to listen to-night a question which may not have occurred to many of you before. The Royal Charter, which was obtained six-and-twenty years ago, was certainly a recognition of the stability of our profession; but the doubt has often arisen in my mind whether we are really permanently needed in the commercial world, or whether professional accountants merely supply a temporary want which in time may cease to exist.

To many of us this is not a question of personal importance, as we can feel pretty sure that accountancy will last out our time; but to you students who may, half a century hence, be flourishing accountants and leaders of the profession it is otherwise.

That the question is not a fanciful one must be admitted when we consider our almost mushroom growth. Such a person as a practising accountant of any standing hardly existed fifty or sixty years ago, and accountancy as an *organised* profession has only existed half that time, for it was on the 11th day of May 1880 that a Charter was granted to the Institute of Chartered Accountants in England and Wales. Business men before then did quite well without us in England, as they do without us at the present day in other European countries. Clearly, then, we are not a necessity to business communities as such,

however useful we may happen to be at the present moment to the commercial world in Great Britain.

It will help us better to understand the situation if we briefly consider what the work of a Chartered Accountant is. One would naturally expect such work to require a special knowledge of bookkeeping and accounts, but such is by no means necessarily the case. Much of his work has nothing whatever to do with pure accounting. Bankruptcies and liquidations are an important branch of accountancy, and yet trustees in bankruptcy, receivers, and liquidators should before all things be good all-round business men, and, in addition to that, they should have some knowledge of the law and practice of bankruptcy and liquidations, while a very limited knowledge of bookkeeping may suffice for this particular class of work.

Bankruptcies and liquidations are given to us accountants, I think, not so much because of our technical training in accounts as because we are business men who, not being tied to any permanent occupation taking up all our time, are able to lay ourselves out for the work, by learning something of the law and practice of the subject, and by carefully surrounding ourselves with skilled staffs of assistants to whom much of the work can be relegated. An accountant is not really the ideal person to carry on or liquidate a business in financial distress. A commercial man who has spent his life in the technical details of a similar class of business would probably know better how to manage it, or how to realise it to the best advantage; but such men, if they are capable, are almost certain to be fully occupied in their own work, so the business comes to us.

Auditing is another important branch of accountancy. Here it is quite a different matter; an amateur auditor is a public danger, and only men with a thorough knowledge of the theory and practice of the various branches of bookkeeping should be allowed to audit accounts. At the same time, for company audits a knowledge of company law and a sound business training are essential to an auditor, if he is to properly understand and deal with the facts recorded in the books he audits.

Bankruptcies, Liquidations, and Auditing are the main branches of accountancy, auditing being the most important. Other matters are put in our hands—such as investigations, the certifying of profits for prospectuses, &c., and the keeping of Executorship and Estate Accounts, all of which may be looked on as accountancy work properly so called. We also undertake various secretarial duties, but all these are only the minor departments of accountancy, and if bankruptcy, liquidation, and audit work were taken from us most members of our profession would, I expect, have to put up their shutters.

I have spoken of auditing as the most important branch

of accountancy. But such could not have been the case at the time the Charter was given to our Institute. In the preamble to the Charter appears the following clause:—

“The profession of public accountants in England and Wales is a numerous one and their functions are of great and increasing importance in respect of their employment in the capacities of liquidators acting in the winding up of companies and of receivers under decrees and of trustees in bankruptcies or arrangements with creditors and in various positions of trust under Courts of Justice as also in the auditing of the accounts of public companies and of partnerships and otherwise.”

It is thus taken for granted that liquidations, receiverships, and trusteeships hold the first place in the work of accountants; and auditing comes in at the end, almost, as it were, an afterthought. Why is so little importance attached to auditing in the Charter? The answer is to be found in the fact that the enormous increase of joint-stock enterprise during the last twenty-five years has greatly increased audit work, while a considerable proportion of bankruptcies and liquidations are now conducted by Government officials, and consequently our work is lessened in that direction; so that Chartered Accountancy of to-day is very different from what it was only a quarter of a century ago.

If these views are admitted—and few, I think, will deny them—we are faced by facts which must give us pause. Not only is accountancy a new profession, but it has also during its short life greatly changed in character. This undoubtedly is a sign of instability, and leads us to question whether our present state may not be a transitory one. Is it not conceivable that some day, perhaps within the lifetime of most of us, official auditors for limited companies may take the place of professional auditors, in the same way that Official Receivers have to so large an extent already displaced accountants? At the present moment the trend of public opinion is in the other direction, and professional audits are preferred to official ones. Still, it was only a few years ago that a great outcry was made against us, and so there may be again: an auditor's position is an anomalous and often an invidious one; though ostensibly the representative of the shareholders, and appointed to criticise the directors' accounts, he is usually the nominee of the directors themselves, and if he has the courage to report to the shareholders that he does not agree with the directors' views, it is not unusual to incontinently shelve him and put some more complacent person in his place. Last year we had a notable case of this kind in Birmingham, and I think all present must recognise that the attitude taken up by Messrs. Gibson and Ashford was a correct one, and one calculated to uphold their own

reputation and the honour of the profession. It appears to me a short-sighted policy on the part of shareholders, who probably have not considered the rights and the wrongs of the case at all, to refuse to re-elect their auditor simply because his views as to the accounts differ from those of the directors. Were such procedure to become common, the office of auditor to limited companies would be untenable, and official auditors with far greater powers than we possess might take our place. The worst of it is that when auditors do disagree with directors it is almost always in a sense unfavourable to the accounts presented, and that shareholders should receive the bearers of bad news with gratitude is a great deal to expect of them. Probably most of you in the course of your practice will have to face a situation similar to the episode I have referred to, and if the reputation of our profession is to be maintained it is essential that no consideration of personal advantage should lead you to give a certificate which you do not conscientiously believe to be correct. At the same time great care is needed, as in matters of opinion we are as liable to make mistakes as other people. However, I think shareholders will come to see that it is to their own interest in the long run that auditors shall be able to truthfully state their opinions without being punished for doing so, and I hope that legislation will some day place an auditor in a more logical position. At the present time the Chambers of Commerce are proposing a step in this direction by advocating an alteration in the Companies Acts, whereby due notice shall be given if the re-election of an auditor is to be opposed.

I have dwelt at some length on this matter because it is of great interest to us locally. I mentioned it in the first place as illustrating the unsatisfactory position of auditors and the consequent possibility of this, the most important branch of accountancy, passing out of our hands into officialdom. I speak of it as a possibility only, for at the present time it seems to me a most unlikely change, and certainly against the public interest.

But whatever may be said for or against our usefulness in any particular branch of our work, it is quite certain that accountants are not so necessary in the commercial world as are lawyers, architects, and engineers. These have to go through a long special training in extremely technical subjects which the ordinary business man would only waste his time in mastering. These professions, as well as others, including that of medicine, are therefore essential to civilisation, and are bound to extend as civilisation itself advances. They were in existence thousands of years ago, and it is no prophecy to say that they will be in existence a thousand years hence. The old saying that a man who is his own lawyer has a fool for his client is truer now than it ever has been, but unfortunately this

will never be true of accountancy. An adaptation of the medical proverb that every man must be a fool or a doctor at forty is more appropriate, and probably it will be truer in the future than at the present day to say that a business man must be a fool or an accountant at thirty. The fact is that the knowledge required by accountants is not so very technical or far removed from the ordinary training which a business man might with advantage go through. A Chartered Accountant should have a complete grasp of both the theory and practice of bookkeeping; but every well-trained business man should also have some knowledge of bookkeeping. An accountant should have a general knowledge of mercantile law; so should a business man, if he is to properly manage the commercial side of a business. An accountant should have a fair knowledge of company law, but it is also well for a director of a company to have more than a smattering of the subject. And I could easily carry the argument further, and show generally that a professional accountant is nothing more nor less than a commercial expert, with an organised staff of clerks to help him in the multifarious business duties which he undertakes.

The fact, then, is that while Chartered Accountants happen at the present time to be useful in many ways to the commercial community, they are by no means permanently necessary, as are lawyers, architects, and engineers. On the one hand officialism may some day oust us from what we consider to be our birthright; and, on the other hand, as business men become better trained themselves they will need our help less.

It may perhaps be thought I am discouraging in the extreme to tell a number of young men on the threshold of their professional career that the profession they have chosen is an uncertain one, and that a turn of the wheel of fortune may some day destroy it and leave them stranded. That, however, is not the aim and end of my discourse. If these risks and uncertainties exist we should do all in our power to strengthen our position. How can we do so? We must be a vigilant and united body to defend ourselves from all encroachments on our rights. One of the means by which this combined action can be upheld lies in the Students' Societies which exist in our different centres; and if your Society existed for no other purpose than to create a feeling of comradeship among accountants, it would still have justified its existence, as united action becomes far easier when we know each other.

But there is another, and far more important, way of maintaining the usefulness and standing of Chartered Accountants. Let us remember that we cannot improve our profession faster than we can improve ourselves, and that we should diligently set ourselves to raise the standard of efficiency of our members. To do this we must see that

the very best training is given to our students; and here, again, I am glad to say your Society recognises its duties. You have taken an active part in working out the new scheme of classes for accountancy and law, which started last year. These classes are far more comprehensive and useful than any that have been attempted in the past. If, however, they are to be permanently established, the attendance of students at them must be not only maintained, but increased. It is partly through the activity of your Society that this can be brought about, and I hope you will see to it that all your members attend them, and attend regularly, so that the capitation grant offered by the Council of the Institute may be obtained.

While I am on the subject of education, I should like to add that I would recommend any young man who intends to be a Chartered Accountant to consider before he enters on his articles the advantages offered by the Birmingham University in the curriculum laid down for the students taking the degree of the Faculty of Commerce. This branch of the University has been in existence too short a time for its degrees to carry with them any widespread recognition of their value, but the curriculum seems to me calculated to give a man a grasp of commercial technicalities and a broad view of business principles, such as a Chartered Accountant more than any other business man should find of great value in after life, and I expect that those who can afford the extra time and money to take their commercial degree, and afterwards to serve their articles in an accountant's office, will start on their professional career much better equipped than those who merely serve five years' articles without taking the degree. I hope that in time it will become a common practice for Chartered Accountants to take a commercial degree, and it will then be interesting to compare the success achieved by those who do so and those who do not.

Since writing this address I have seen a paragraph in the newspapers stating that it is intended in future to bring the Faculty of Commerce in closer touch with the Engineering Section of the Birmingham University. This is a very interesting proposal, and I feel sure that it is a wise step to take, as it is really ludicrous to see the haphazard way in which most manufacturers pick up their engineering knowledge. They generally leave really important matters to foremen or fitters to decide, or if they have plenty of money to spend will follow the advice of a consulting engineer without being able to adequately state their requirements to him, so that muddles and blunders are always being made which would have been avoided if the manufacturer had some knowledge of engineering. At first sight it might be thought that engineering is not a subject which concerns accountants, but upon reflection I think it must be admitted that some

knowledge of it is valuable. Whenever we sign a Balance Sheet of a manufacturing concern we ought to form an independent opinion as to the adequacy or inadequacy of the depreciation written off plant and machinery, and the same question is always cropping up when we settle income-tax assessments for clients. Does it not stand to reason that we are in a much better position to discuss these matters intelligently if we have some technical knowledge of machinery? Accountants, when deciding questions of depreciation, are apt to be too much men of figures than practical business men. They are too ready to put their faith in fixed percentage rates of depreciation, in spite of the fact that not only do conditions vary greatly in different classes of business, but also they vary from year to year in the same business. It seldom really happens that plant depreciates in a business at the same rate two years running, and yet one sees plant and machinery written down year after year at a uniform rate with monotonous regularity and to the complete satisfaction of the auditor. There is, however, some underlying sense in this if the rate of depreciation is in excess of what is required for mere wear and tear, because plant not only wears out but also it becomes obsolete, either in consequence of better machines being invented or because the demand for particular classes of goods falls off. For instance, electricity is fast driving out other forms of motive power, automatic tools and quick cutting tools are taking the place of old-fashioned lathes. Now if we can intelligently follow these matters we are in a much better position to discuss questions of depreciation with our clients, and therefore are better able to arrive at sound conclusions. So some knowledge of engineering is all to the good, and this new move of the Faculty of Commerce should add to rather than take from its usefulness as a training ground for Chartered Accountants.

Having dwelt on the uncertainties of our profession, and the educational methods we should adopt to advance our reputation and to render ourselves necessary as well as useful to the commercial world, I will now conclude my address by drawing your attention to some directions in which there seems to be scope for accountants to extend their activities in the future.

Accounting is taking a more important part in the organisation of industrial concerns. The tendency of manufacture nowadays is to concentrate in large factories. In many trades already the small man is doomed; he cannot produce so cheaply as those who turn out goods in great quantities. In large works careful statistics are required by the management, if a proper watch is to be kept over what is going on, as supervision of individual workmen by a manager is out of the question when the

hands are counted by hundreds, or even thousands. The Departmental and Cost Accounts kept for this purpose are now far in advance of what was attempted a few years ago, and I suppose it is the experience of most accountants that they are called in to examine and advise on systems of costing more and more each year. The best forms of Cost Accounts for varying conditions is a difficult and perplexing subject, and accountants will greatly increase their usefulness and reputation if they give more attention to it. I believe that many a business owes its success mainly to its good system of costing; and, on the other hand, many businesses have got into difficulties mainly through not keeping costs. It must, however, be admitted that for some businesses to keep a complete set of Cost Accounts would be useless, or too expensive to be practicable. Recording costs is a complicated subject, and my object in referring to it is to point out that Chartered Accountants might do much more in it than they are doing.

A short time ago I read an interesting paper on industrial engineering by Henry R. Towne, an American mechanical engineer. Mr. Towne strongly advises engineers to turn their attention to administrative as well as to technical work. He points out that industrial management has of late years become a vast field for the exercise of talents of the highest order, and he urged the young engineers whom he was addressing to carefully consider whether their aptitudes and opportunities lay in the direction of administrative work, and, if so, to boldly enter the field of industrial engineering instead of taking up a consultative practice. Mr. Towne then goes on to show what an important part industrial accounting plays in the carrying on of businesses, and I am inclined to think that a good deal of the advice he gives to engineers is applicable to accountants. The training and experience which an accountant gets, compared with that of an engineer, are better calculated to make a good all-round business man of him, and in this age of joint-stock company enterprise a good business man with administrative and organising ability is in great request, and can command high pay. Engineers who take up this sort of work turn their attention to engineering and manufacturing businesses; accountants, on the other hand, naturally take up work in which financial and commercial skill are chiefly required, and there are instances in which Chartered Accountants have in this way achieved notable success. Directors of limited companies are coming more and more to appoint Chartered Accountants to secretarial posts, and such posts may often be stepping-stones to something better. I should, however, advise a young accountant not to be in too great a hurry to take such a berth. Let him resist the temptation of giving his whole time to a secretaryship with what may appear to him a tempting salary.

if by so doing his future career is discounted. An extra year or two spent in acquiring the varied experience which is obtained in the office of a practising accountant may prove of the greatest use later on.

Not only are Chartered Accountants sought after for the posts of secretary or manager of limited companies, but often they prove of great use on boards of directors. Their technical knowledge of accounts and their business experience should make them peculiarly suitable for such positions. Men who have been trained as Chartered Accountants, and at the same time possess organising and administrative capacity, will, I believe, find new fields of activity in directorial work to the advantage of themselves and of the commercial community. I hope the day is not far distant when a board of directors of any large undertaking is looked on as incomplete without a Chartered Accountant on it.

The audit of municipal and county accounts is likely soon to be another useful opening for Chartered Accountants. I do not mean the present office of elective auditor, which is generally a mere waste of an accountant's time and of the ratepayers' money, especially if competing accountants, as so often happens, put their friends to the trouble and the ratepayers to the expense of a contested election. Such an audit consists of mechanical checking work, which is deadly dull and gives no scope for the intelligence, but only requires accuracy in monotonous details. Quite apart from an elective auditor's work, however, it is becoming a common practice of town councils to usefully employ professional accountants in the examination of municipal accounts, and in this connection I will read you extracts from a report issued in 1903 by a Parliamentary Committee which had been appointed to consider the question of municipal trading. This Committee was successor to another Committee appointed in 1900 to report on the same subject of municipal trading. The earlier Committee, however, after taking a great mass of evidence, was dissolved before it had time to make any report. The 1903 Committee, profiting by the experience of its predecessor, decided that it was impossible in a single Parliamentary session to make a report on the whole subject of municipal trading, and wisely devoted its attention in the first instance to one or more distinct aspects of the question. The subject which was first dealt with was municipal accounts and their audit. Whether these subjects were selected because of their primary importance or because "accounts" and "audit" happen to begin with the letter "A" I do not know, but anyhow the report contains recommendations which are of the highest interest and importance to Chartered Accountants. The following is what the Committee says:—

"Whatever view may be taken of the proper limits, if

any, which can be set to municipal trading, it is clearly important that wherever it exists ratepayers should be not less fully and continuously informed of the success or failure of each undertaking than if they were shareholders in an ordinary trading company.

In a large number of cases this is undoubtedly done. But there is in some instances evidence to a contrary effect, and in view of the ever increasing number and magnitude of municipal undertakings it is most desirable that a high and uniform standard of account-keeping should prevail throughout the country.

The Committee are doubtful whether it would be possible to prescribe a standard form of keeping accounts for all municipal or other local authorities, having regard to the varying conditions existing in different districts. But they recommend that the Local Government Departments should invite the Institute of Chartered Accountants, the Incorporated Society of Accountants and Auditors, and the Institute of Municipal Treasurers and Accountants of England and Wales, and the Society of Accountants in Edinburgh, and the Scottish Institute of Accountants (Glasgow) to confer and report upon the matter.

The Committee have directed full attention to the question of audit.

The Committee recommend that a uniform system of audit should be applied to all the major local authorities—viz., the councils of counties, cities, towns, burghs, and of urban districts.

At present municipal corporations in England and Wales, with a few exceptions, are only subject as regards audit to the provisions of the Municipal Corporations Act, 1882, by which one auditor, who must be a member of the town council, is nominated by the mayor, and two, who cannot be members of the town council, are elected by the ratepayers.

The evidence shows that no effective system of audit is thus supplied. The elective auditors are poorly paid, or are unpaid altogether. Little interest is taken in their election, and although in some cases they are able to lay a finger on a particular irregularity, it is not clear that they could not make the same discovery in the capacity of active ratepayers. No complete or continuous audit is ever attempted by them.

All county councils, the London borough councils, and urban district councils are subject to the Local Government Board audit. This audit is carried out by district auditors, who, as a rule, are not accountants, and are not, in the opinion of the Committee, properly qualified to discharge the duties which should devolve upon them.

The duties of the auditors seem to be practically confined to certification of figures and to the noting of illegal items of expenditure.

To apply this system of audit to municipal corporations would arouse strenuous opposition from them, and the course may be considered impracticable; but in addition to this the fact that district auditors are not accountants seems to unfit them as a class for the continuous and complicated task of auditing the accounts of what are really great commercial businesses.

The Committee accordingly recommend that:—

- (a) The existing systems of audit applicable to corporations, county councils, and urban district councils in England and Wales be abolished.
- (b) Auditors, being members of the Institute of Chartered Accountants or of the Incorporated Society of Accountants and Auditors, should be appointed by the three classes of local authorities just mentioned.
- (c) In every case the appointment should be subject to the approval of the Local Government Board, after hearing any objections made by ratepayers, and the auditor, who should hold office for a term not exceeding five years, should be eligible for reappointment, and should not be dismissed by the local authority without the sanction of the Board.
- (d) In the event of any disagreement between the local authority and the auditor as to his remuneration, the Local Government Board should have power to determine the matter.
- (e) The Scots practice of appointing auditors from a distance in preference to local men to audit the accounts of small burghs should in similar cases be adopted in England.

The Committee are of opinion that it should be made clear by statute or regulation that the duties of those entrusted with the audit of local accounts are not confined to mere certification of figures. They therefore further recommend that:—

- (a) The auditor should have the right of access to all such papers, books, accounts, vouchers, sanctions for loans, and so forth as are necessary for his examination and certificate.
- (b) He should be entitled to require from officers of the authority such information and explanation as may be necessary for the performance of his duties.
- (c) He should certify:—
  - (i.) That he has found the accounts in order, or otherwise, as the case may be;
  - (ii.) that separate accounts of all trading undertakings have been kept, and that every charge

which each ought to bear has been duly debited;

- (iii.) that in his opinion the accounts issued present a true and correct view of the transactions and results of trading (if any) for the period under investigation;
- (iv.) that due provision has been made out of revenue for the repayment of loans, that all items of receipts and expenditure and all known liabilities have been brought into account, and that the value of all assets has in all cases been fairly stated.

Auditors should be required to express an opinion upon the necessity of reserve funds, of amounts set aside to meet depreciation and obsolescence of plant in addition to the statutory sinking funds, and of the adequacy of such amounts.

The auditor should also be required to present a report to the local authority. Such report should include observations upon any matters as to which he has not been satisfied, or which in his judgment called for special notice, particularly with regard to the value of any assets taken into account.

The local authority should forward to the Local Government Board both the detailed accounts and the report of the auditor made upon them. It should be the duty of the auditor to report independently to the Board any case in which an authority declines to carry out any recommendation made by him.

A printed copy of the accounts, with the certificate and report of the auditor thereon, should be supplied by the local authority to any ratepayer at a reasonable charge.

After careful consideration the Committee are of opinion that in view of the thoroughness of the proposed audit, powers of surcharge and disallowance could be altogether dispensed with in the case of the major local authorities.

Those powers could not, it is believed, be applied to municipal corporations, in view of the strong objection expressed by them; and it is doubted whether their retention in the case of other authorities would compensate for the loss of uniformity which would result.

The power of disallowance, applying as it does only to illegal expenditure, and not to unwise undertakings and enterprises, does not afford any real safeguard to the ratepayers whose interests are affected.

With a continuous, vigilant, and thoroughly efficient system of inspection and audit, the surest guarantee to the ratepayers against extravagance is to be found in the

detarrent effect of public exposure, in addition to the existing legal remedies."

This is what the Committee advised, and if their recommendations are carried out the accountancy profession will benefit greatly, for the accounts of every corporation, county council, and urban district council will be audited by a professional accountant, and when we consider that there are 1,600 of such bodies in England and Wales alone, some idea can be formed of the new work there may be in store for us. It should be noted, too, that the audits are to be thoroughly efficient, needing great judgment and skill; they are to be quite different from the ineffective performances of the existing elective and district auditors. That such recommendations could be made by so important a body as this Joint Parliamentary Committee must be gratifying to accountants. Unfortunately the Committee's Report was put on the shelf during the decrepitude of the last Parliament. No sooner, however, did the new Government come into office, with an active Minister at the head of the Local Government Board, than he appointed a Departmental Committee to inquire and report on the systems on which the accounts of local authorities are kept, and if the question of their audit does not form part of the inquiry we may reasonably hope that it will follow later.

Before ending my address it may be useful to briefly sum up what I have said. I have drawn attention to the fact that accountancy is a comparatively new profession, not deeply rooted or intrinsically necessary to civilisation. To a great extent our existence is dependent on the esteem in which we are held by the commercial world, and it behoves us therefore to be thoroughly well qualified to do the work which comes to us, and the chief duty of your Society is to help your members to get the best training possible. It is also the duty of every Chartered Accountant to do all he can to raise the standing of the profession generally. I pointed out that the term "accountant" is to some extent a misnomer, as in much of our work accounting takes quite a subsidiary place, and "commercial expert" would better describe our functions. In this connection I suggested that the course required for taking the degree of the Faculty of Commerce in our Birmingham University seemed a desirable training for an accountant to go through. And finally I indicated some directions in which Chartered Accountants are likely to find greater scope for their energies than they have done in the past, referring more particularly to Cost Accounts, administrative and directorial work, and the audit of the accounts of public bodies.

The conclusion that forces itself on my mind in regard to the future of our profession is that while the exact directions in which we may develop are uncertain, it is

fairly certain that we shall continue to develop, and probably we shall do so in ways that are hardly thought of now.

Possibly it may interest you to know my own sentiments in regard to accountancy. You and I look at it from different standpoints; you are on the threshold of your career, and naturally look forward. My personal point of view is more retrospective. If I had had my choice when I started in life I should probably have elected to be an engineer; I am glad, however, that I had no choice. Engineering is in some ways more interesting than accountancy, especially in the student stage. When I think of the drudgery an accountant student has to go through, the endless postings and additions he has to check in order to become quick and accurate and to gain an insight into accountancy practice, I almost wonder anyone can be found to undertake it. But as a man advances in his career he passes on much of this drudgery to his juniors, and the interesting part of his work opens up more fully before him.

Accountancy is more an art than a science. Unlike engineers, we have few fixed rules or formulæ to guide us; especially is this the case in audits and investigation work. The old-fashioned notion that an audit consists chiefly of routine checking work is, I hope, fast dying out. In deciding how to carry out audits each one has to be dealt with on its own merits. The personal element has to be taken into account, skill in weighing of evidence should come into play, and the capacity of those to whom we delegate our work is a more important matter to us than the quality of his tools is to an engineer. There is much that is interesting in dealing with these questions; in fact, I am inclined to think that accountancy is almost as fascinating as engineering, and it has the advantage of providing a wider field of employment. How often does one come across a young engineer thoroughly capable, well trained, and eager for work, who cannot get anything to do, except perhaps a fitter's or foreman's work. Any qualified Chartered Accountant, however, possessing ability and energy can, without difficulty, get suitable work of one sort or another, and, if he be courageous and enterprising, prosperity is certain to follow. So I feel that I can honestly congratulate you all on the career you have chosen, and I hope that when you are in practice yourselves you will remember these words of Bacon: "I hold every man a debtor to his profession, from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends to be a help and ornament thereto."

A vote of thanks to Mr. Carter was proposed by Mr. A. C. Ridgway, seconded by Mr. J. C. Pearce, and carried with acclamation.

## Bristol Chartered Accountants Students' Society.

### "Faults in the Companies Acts and their Remedies."

By MR. G. H. BOUCHER.

At a meeting of the Bristol Chartered Accountants Students' Society, held at the Library, Albion Chambers, Bristol, on Friday evening, February 9th, at 5.30 p.m., a lecture on "Faults in the Companies Acts and their Remedies" was delivered by Mr. G. H. BOUCHER, solicitor. Mr. PERCY JENKINS, F.C.A., presided, and there was a good attendance.

#### *Faults in Company Law.—Positions of Creditors.*

An important point, and one bristling with difficulties, is how to improve the position of the ordinary creditor of a company where a receiver has been appointed by the debenture-holders. A debenture, as you know, is a charge which either creates a debt or acknowledges it, and practically any document which fulfils either of these conditions is a debenture. In the case of every well-drawn debenture the money, or debt, secured by it is made payable upon the happening of certain specified events, such as the non-payment of principal or interest, or in the event of the company going into liquidation, and such like. When the debenture becomes due the debenture-holders may adopt one of several courses. They may, for instance, appoint a receiver of the whole of the assets of the company, and may also authorise him to carry on the business. Let us see how this works in practice. Let us suppose a railway company has been worked at a loss and has been unable to pay the interest on its debentures or debenture stock. The debenture-holders appoint a receiver, who carries on the business and works the line. Now, let us further suppose that the railway company is the Pill and Kingswood Railway. John Crispin, a Kingswood cobbler, being desirous of attending a Liberal Thanksgiving Service at Liberty Hall, Pill, travels by the railway, which, all unknown to him, is being worked by the receiver on behalf of the debenture-holders. The receiver works the line on economical principles, and does not waste money on such superfluous commodities as gas. On arriving at his destination at Pill, darkness covers the face of the earth. The station lamps are not lighted and there are no porters on the platform. The only lights to be seen are the lights of the disappearing train in the distance and a faint glimmer from the signal-box hard by, which instead of helping friend John only serve to confuse him. In his hurry to be in time for the rendering of the first

hymn, he blunders down the platform and, owing to the darkness, stumbles over the station wheelbarrow, which railway porters appear to take a fiendish delight in leaving in everybody's way. John stumbles. He falls. He rolls off the platform to the line below. He barks his shin, grazes his elbow, and otherwise injures his leg. "House-maid's knee" supervenes, and friend John, instead of joining the thanksgiving service, is laid up for a month! Not unnaturally he vows vengeance and seeks compensation. Alas! he seeks in vain. He goes to Court and obtains a judgment for, say, £300. But when he seeks to reap the fruits of his judgment he finds that he cannot. All the usual methods of enforcing payment are closed to him. Being a limited company there is no person whom he can kick or put in prison, and he cannot put the sheriff in possession, for that would be a contempt of Court. Between his judgment and the realisation of it stands a compact body of debenture-holders to an amount of perhaps £200,000 or £300,000, and until their claims have been satisfied poor cobbler John is out in the cold. His claim is, in legal language, postponed to the claims of prior incumbrancers. This seems a great hardship, and is a matter which urgently needs alteration. The law should be that where debenture-holders carry on a business by themselves, or by their receiver, they should be liable for all damage incurred by his or their so doing.

In our last illustration we said that a judgment creditor cannot put the sheriff in possession of a company's effects after a receiver has been appointed. As a matter of fact, it is nearly always impossible for an ordinary creditor to put in an execution at all, an execution, as you know, being the technical mode of putting the sheriff in possession with a view to selling the property and payment being made. The reason is that in almost every company there are debenture-holders, or mortgagees, and these take priority over every other claim. Of course, in a measure an ordinary creditor can, in theory at least, always protect himself. Before giving credit to a company he can please himself whether he will deal with the company or not. He can also, if he wishes, even take a pleasurable journey to London, and endeavour to search out the financial position of the company from the official records. It will only cost him a couple of pounds or so and the loss of a day's work. This, it is true, may be an expense quite out of proportion to the amount of profit likely to be derived from his deal. But that is a mere detail which he must not blame the law for. The law assumes in such cases that time and money are of no importance whatever, and if the creditor, or intending creditor, does not choose to take the trouble to search for information—well, the law metaphorically washes her hands of the matter.

It is a general principle of our law that an execution



creditor takes what the sheriff can, on his behalf, lay hands on, subject to all equities attaching to the property in the hands of his creditor. The meaning of this obscure sentence will become clearer presently. Therefore, where there is a floating charge over the whole of the company's property, such as is given by most debentures, it is impossible for the execution creditor to claim the benefit of the execution as against the owner of the floating charge, at any rate, if the latter intervenes before the sheriff has sold the property. A company is only authorised to deal with its property in the ordinary course of its business. And though one might suggest that to pay a creditor was only carrying out the ordinary course of business, it would be distinctly rude to say that a company ought to be compelled to do so by the aid of the sheriff and his satellite, "the humble bum." When, therefore, a company is threatened with an execution, the holders of a floating charge may apply to the Court to appoint a receiver, and the Court will do so even though the money secured by the floating charge is not yet due. And the result will be that the creditor will be "diddled" out of his money.

What is the case, you will ask, which establishes this extraordinary position? It is the case of *Re London Pressed Hinge Company; Campbell v. London Pressed Hinge Company* (1905, 1 Ch. 576). There a company had issued certain debentures, giving a floating charge on its present and future property. There was a condition that the principal should be payable if there were a default of interest for a period of six months, and if an order were made or resolution passed for winding up. The debenture-holders asked for the appointment of a receiver and manager, on the ground that their property was jeopardised by the circumstance that the assets were insufficient to satisfy the debentures and that execution was about to be levied by a judgment creditor. There was no interest in arrear and no principal due on the debentures, but that did not prevent a receiver being appointed. The Judge did it reluctantly, it is true, but the fact remains that he did it. The result was that the company could not pay the creditor to whom payment was due in priority to the debenture-holder to whom nothing was owing, and the former will probably have to whistle for his money.

The remedy would appear to be simple; but it will necessitate the intervention of the Legislature, which will probably be a matter for the dim and distant future.

As is fairly well known, a judgment creditor is not confined to his remedy of levying an execution, which, as we have seen, may prove no remedy at all. He may adopt one of several other remedies. He may, for instance, know of someone who owes money to his judgment debtor, and the law has provided means whereby the money due from the third person to the judgment debtor may be "annexed"

by the judgment creditor. The process necessary for "annexing" the money is called "garnishee proceedings." In the case of a limited company being the judgment debtor, the judgment creditor may, if he succeeds in obtaining an absolute order for payment to himself of the money due to the company, snap his fingers at any receiver of the company who may thereafter be appointed; but if he has not obtained an absolute order, and a receiver is appointed before it is perfected, the receiver will be entitled to the money on behalf of the debenture-holders. Garnishee proceedings are somewhat involved, and time will not permit of a full explanation of the process, but you will have gained sufficient information to realise the importance of obtaining an absolute order prior to a receiver being appointed. (Further information may be gained by a perusal of *Robson v. Smith*, 1895, 2 Ch. 118.)

#### *Registration of Charges, &c.*

As you know, one of the most important alterations which the Companies Act, 1900, effected was as to the registration and filing of notice of charges on the assets of a company.

By Section 14 of the Act it is provided that every mortgage or charge for securing any issue of debentures or a charge on the uncalled capital of the company, or a floating charge on the undertaking or property of the company, &c., requires to be filed within twenty-one days after the date of its creation, and if not filed within that time it is, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator and any creditor of the company.

In passing, we may notice another small defect, but, like Mr. Midshipman Easy's nurse's baby, it is such a little one that an apology might almost be needed for mentioning it, viz.:—that the words "property or undertaking" do not include uncalled capital. But it can hardly be intended that a charge on the uncalled capital should be valid though not registered, while a security on the company's undertaking or property should be invalid unless it is.

A much more important matter is that though any mortgage or charge for securing debentures is required to be registered, yet a specific charge on freeholds or leaseholds, or a lien created in the ordinary course of business, and also probably a mortgage of capital called up but still unpaid, unless given to secure debentures, is not within the section and does not require registration.

So we have this anomalous position. A company which issues, say, debentures or debenture stock certificates for securing a hundred or a couple of hundred pounds, must file particulars within twenty-one days, but the very same company may give a specific mortgage for, say, £100,000, and need not file particulars. In the one case, therefore,

there is the record of the borrowing of money by a company, but in the other there is not. There is nothing to show an intending creditor, even though he search the company's file at Somerset House at the expiration of, say, three months after the mortgage, that any such charge has been given.

A word or two as to the Register of Mortgages which the Legislature in its supreme wisdom, at great pains and with severe penalties, has established. Its object, of course, is to afford information to all and sundry what the position of the company is, so that a man may decide whether he will give credit to the company or not, either in the ordinary course of business or on the security of debentures. Does this register do this? Let us see. It is by no means uncommon to find that the trust deed securing an issue of debenture stock, or the debenture itself, prohibits the company from creating mortgages or charges on its freehold or leasehold land in priority to the debenture; but if a legal mortgagee, without notice and in ignorance of prohibition, advances money to the company, he obtains an absolutely good and effectual charge in priority to the debenture-holders, and is in no way affected by the fact that the company had no right to give the mortgage. The register in the possession of the Registrar of Joint Stock Companies does not show the existence of this mortgage, nor yet of the restriction on the borrowing powers of the company. The result is that a debenture-holder may find his security postponed to a mortgage of later date. But I think I hear someone remark, "The company must keep at its registered office a copy of all instruments creating charges." Yes. That is true. But while the register at Somerset House, which does not show the restriction against borrowing money in priority to the debenture, is open to the public on payment of one shilling, the copy document at the registered office of the company is only open to the inspection of members and creditors, not intending members or intending creditors.

Let us consider the question of registration of mortgages from another standpoint.

The Act says that every mortgage or charge—

- (1) For securing debentures; or
- (2) On the uncalled capital of the company; or
- (3) A charge evidenced by an instrument which if executed by an individual would require registration as a bill of sale; or
- (4) Any floating charge on the property of the company, requires registration.

Let us suppose that a company has since the 1900 Act created a charge under one or other or all of the above heads. We will take the case of a brewery company.

A brewery company, having created and duly filed the charge in accordance with the Act, sells some of the property comprised in the charge in the usual course of business, and pays the money received from the sale to the trustees for the debenture-holders. We will say it sells a public-house which is not wanted. It afterwards buys another public-house, and to enable it to do this it borrows from the trustees for debenture-holders the money it had paid them on the sale of the other house. The company, in fact, substitutes the house just bought for the house it has sold. No fresh trust deed is executed, no other security given. Is this the creation of a charge which requires registration?

The Court of Appeal, in the case of *The Cornbrook Brewery Company v. Law Debenture Corporation* (1904, 1 Ch. 103), decides that it is.

The result is that *immediately*—that is to say, within twenty-one days of the substitution of the newly bought house for that just sold—the company must register the deed conveying the property to the debenture trustees with the Registrar of Joint Stock Companies; but that is not the worst feature. A copy of the certificate which is given by the Registrar of the due filing of the instrument must be placed on every debenture issued by the company, and it presumably follows therefore that the company will have to call in all its debentures in order that the copy certificate may be placed on each.

This result is the more absurd inasmuch as directly the company buys any property, whether it be a public-house or a pocket of hops, the thing bought becomes *ipso facto* subject to the provisions of the trust deed, because it forms part of the floating assets of the company.

You will please bear in mind the distinction existing between a purchase by the company and a purchase by the debenture-holders' trustees. The two are quite distinct.

Now if, instead of buying a new house and borrowing the money from the trustees for debenture-holders, the company had procured the trustees to buy the property themselves, and allow the company to use it in all respects as if it were its own, there would be no need to register at all, because, you see, it would not be in any sense the creation *by the company* of a charge or mortgage. Undoubtedly the object of the Act is to show what money a company has borrowed by way of debentures, debenture stock, &c., but it is submitted that this result could be more effectually and more satisfactorily attained by compelling limited companies to file (every year) a full and complete Balance Sheet certified by the auditor, who should be a properly qualified accountant, and countersigned by the secretary. This would obviate all difficulty, and would save much trouble and annoyance.

*Tricky Waiver Clauses.*

The most important practical matter in connection with the formation of a company is usually the obtaining of capital. This is essentially the business of the company promoter. To be a successful company promoter, then, it is necessary to have the faculty of getting money into the concern, and the easiest way to get it is by means of a "prospectus," sown broadcast over the country. The expression "prospectus" means, unless the context otherwise requires, any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company.

Great ingenuity is displayed in the prospectus. Take up any prospectus haphazard, and you will be able to verify this. The glowing terms in which the prospects of the company are described are marvels of descriptive word painting, and, in many cases, of vague yet inspiring promises. But perhaps prior to 1900 the greatest ingenuity was exhibited in getting round the provisions of Section 38 of the Companies Act, 1867. This required the disclosure in the prospectus of the date and parties to any contract entered into by the company or the promoters, directors, or trustees thereof, before the issue of the prospectus. The Courts whittled down the section by holding that it applied only to contracts affecting the company which were *material* to be known to subscribers. This was a great success. But greater still was the happy thought of the man who hit on the idea of stating in the prospectus the fact that there were or might be contracts in existence, but that the intending subscriber should be deemed to have had notice of them; and this provision was further safeguarded by providing in the form of application for shares which the intending subscriber had to sign that he waived notice of any contracts entered into by or on behalf of the company. That practice is forbidden by the new Act.

The 1900 Act requires the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected, to be set out in any prospectus or other invitation offering to the public for subscription or purchase any shares or debentures of a company, but there is an exception in the case of contracts entered into in the ordinary course of business.

For vagueness and uncertainty Section 10 of the Act of 1900 is delightful. For instance, it deals with every material contract without specifying between whom or for what purpose it must be material. Again, it is necessary to state a reasonable time and place where the contracts or copies may be inspected; but it is not stated that the

company or the promoters must produce the contracts or copies to any applicant, nor whether the applicant has any remedy in case of refusal. Nor is any idea given of what is a reasonable time or reasonable place for inspection. But we were speaking of the ingenuity of the "promoter." One of his latest devices is to file a prospectus with the Registrar in accordance with the requirements of Section 9, and then to advertise in the newspapers a very much abridged copy of that prospectus. This is prefixed by a declaration, with or without reference to the complete prospectus, to the effect that the advertisement is published by way of information only, and not for the purpose of inviting subscriptions for shares. It is very difficult to believe that so barefaced an attempt at evading the statute could hold water, but yet I must confess I cannot see why it should not. It is like a blind man walking slowly in the gutter, bearing a card on his breast with the words "I am blind" upon it. He cannot by merely wearing the card be said to be begging, although the natural inference is that his object is to excite the pity of the charitably disposed. So the newspaper advertisement does not in express terms offer shares for subscription. On the contrary, the natural assumption that it aims at doing so is positively negatived. But with what other object the same is published it is impossible to conjecture.

To say that minute details concerning a company are presented to the world at large "by way of information only" strikes one as an artful dodge to justify the omission from the advertisement of certain necessary particulars. If one wishes to ascertain what these particulars are, recourse must be made to the full prospectus, and this, as we have seen, there is no obligation on the company or the promoters to produce.

No doubt Section 30 ought to include in its definition of "prospectus" not only, as at present, any prospectus, notice, circular, advertisement, or other invitation offering to the public, but any prospectus, notice, circular, advertisement, or other invitation *impliedly* offering to the public for subscription or purchase any shares or debentures of a company. If the point should ever come before the Courts for decision it might possibly be held that the word "impliedly" should be read into the section, but it is difficult to see how the matter can be brought before the Courts. For how can a director or other person be made responsible for an advertisement for not disclosing a contract at the suit of a shareholder who alleged he applied for shares on the faith of such advertisement, which, when it is examined, expressly says it is published by way of information only, and not for the purpose of inviting subscriptions.

The matter appears to be clearly one for the intervention of the Legislature.

*Amalgamation and Reconstruction.—An Omission from the Act of 1862.*

These are days of big companies and big enterprises, when, in order to kill competition and to lessen expenses of management, it is frequently desirable for several companies to amalgamate for mutual protection and advantage. Perhaps the best illustration of this is the case of the Imperial Tobacco Company of Great Britain and Ireland, Lim., which company is for brevity's sake known on the Stock Exchange by the one expressive word "Smokes."

Here, as we all know, owing to the invasion of the Americans in the domain of "Smokes," most of the large companies in England, with Messrs. Wills at their head, banded themselves together for mutual protection under the style above named. How they succeeded is now a matter of history. The invasion was repulsed, the Yankees retreated, and the war was successfully carried into the enemy's country. This result could not have been attained unless the several companies and firms forming the "Combine" had made common cause against the common enemy. When these companies collectively formed one large new company it became necessary for each separate company to be wound up; and when any company arranges to amalgamate with another company by selling or transferring its property to the other company it becomes a matter of importance to ascertain how this can be carried out. Because, as a rule, the purchasing company wishes to pay the shareholders and creditors of the other company in either shares or debentures rather than in cash, and herein frequently arises a difficulty. As accountants are often appointed liquidators, it is a subject I specially commend to your notice.

A liquidator derives his power to accept shares, &c., in lieu of purchase-money from Section 161 of the Act of 1862. This is a very lengthy section, but only a portion of it need trouble us. It provides that—

"where a company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up."

The liquidator may, you see, sell for shares, &c., in the

purchasing company, but the section does not provide how he is to distribute the shares, &c., among the members of his own, the vendor, company. He is bound to deal with them strictly in accordance with their rights.

Let us suppose that in the vendor company there are not only ordinary shareholders but also preference shareholders and the holders of founder's shares entitled to special rights in the distribution of the assets. If 10,000 shares of £10 each are to be distributed, and the rights of the holders of preference shares to the extent of £20,000 are that they shall be paid in full the amount of such shares before any repayment is made to the holders of ordinary shares, how is it possible for the poor unfortunate liquidator to say how many shares in the new company would be equivalent to a payment in full of the amount of the preference shares?

It is often attempted to meet the difficulty by giving holders of preference shares in the old company preference shares in the new; but this will not prevail over the rights of any old shareholders who insist on getting the full value of their shares before the old ordinary shareholders get anything.

In addition to this difficulty preference shareholders may wish to receive ordinary shares in lieu of preference in the new company, or an ordinary shareholder may wish for preference.

The result is that where there are preference as well as ordinary shareholders a reconstruction or amalgamation is not possible unless either the articles of association provide for such a contingency—which is perhaps unlikely—or the preference shareholders consent unanimously, or those who do not consent to the proposed distribution also dissent from the whole scheme, in which event the liquidator may pay them out in cash (which they may not want) under the provisions of Sections 161-2.

It is true the liquidator might bring the scheme before the Court in accordance with the Joint Stock Companies Arrangement Act, 1870, an Act which though formerly comparatively little used has acquired additional importance by virtue of the 1900 Act. If the Court approved the scheme it would be binding on the preference shareholders, but if a large section opposed the application the Court might refuse to affect their rights by sanctioning the scheme.

Often and often carefully drawn up schemes of reconstruction, as apart from amalgamation—although, as you will readily see, the same principle is involved—are upset by a dissentient majority on the ground that some of the proposals are an infringement of the rights of the minority which the majority cannot impose on them.

When next the Legislature turns its attention to company law it is hoped they will deal with this question by giving

the liquidator full power to distribute the assets and bind a dissentient minority, subject, of course, to the right of appeal to the Court in case of dispute.

At the close of the lecture a discussion took place upon the advisability of compelling companies to file an annual Balance Sheet, as suggested by the lecturer.

The meeting concluded with hearty votes of thanks to the lecturer and to the Chairman.

### Meetings for the ensuing Week.

**Tuesday** — INSTITUTE OF CHARTERED ACCOUNTANTS.—

Finance Committee at 2 p.m.; Applications Committee at 3 p.m.

**Wednesday**.—INSTITUTE OF CHARTERED ACCOUNTANTS.—

Council Meeting at 12 noon; Twenty-fifth Annual Meeting at 2 p.m.

CHARTERED ACCOUNTANTS' BENEVOLENT ASSOCIATION.—Twentieth Annual Meeting at the conclusion of the Annual Meeting of the Institute.

### Personal.

MESSRS. F. ROWLAND, SMITH & CO., of 17 St. Swithin's Lane, E.C., announce that they have opened a branch office at Grosvenor Buildings, The Quadrant, Richmond, Surrey.

MESSRS. G. N. READ, SON & CO., Chartered Accountants, of 44 Gresham Street, London, E.C., announce that they have opened a branch office at Gazette Building, Water Street, St. John's, Newfoundland, under the control of Mr. ERNEST R. WATSON, A.C.A.

### The Chartered Accountant Students Society of London.

#### Twenty-third Annual General Meeting.

THE twenty-third annual general meeting of the Society was held at the Institute of Chartered Accountants on Wednesday, 18th April 1906, Mr. W. H. Fox, F.C.A. (Vice-President) kindly presiding in the unavoidable absence of the President, Mr. Edwin Waterhouse, M.A., F.C.A.

### REPORT AND ACCOUNTS.

1. Your Committee have much pleasure in presenting the Society's Twenty-third Annual Report.

2. The number of Members on the 31st December

1904 was .. .. . 833

Admissions during 1905:—

Ordinary Members .. .. 114

Honorary „ .. .. 4

118

Less:—

Resignations .. .. 38

Deaths .. .. 4

Memberships lapsed under Rule 8 .. 39

81

Membership on 31st December 1905 .. .. 870

Showing a net increase for the year of 37.

3. During the year twenty-five Meetings have been held of the Committee and Sub-Committees.

4. The following is a list of the meetings of the Society held during the year:—

Twenty-second annual general meeting. Chairman, J. G. Griffiths, F.C.A.

Discussion: "December 1904 Examination Questions." Openers, H. G. Cocke, A.C.A., L. J. Yeoman. Chairman, Daniel Hill, F.C.A.

"Some Notes on Stock Exchange Securities." Lecturer, M. Gladwin Baillie, A.C.A. Chairman, E. E. Price, F.C.A.

Reading of Prize Essay of the Union of Chartered Accountant Student Societies: "Cost Accounts, their Advantages and their Relation to Business Results." By Stanley Pedder. Chairman, W. H. Fox, F.C.A.

"Secured Creditors in Bankruptcy and Winding-up." Lecturer, Herbert Jacobs, Barrister-at-Law. Chairman, Basil W. Hardcastle, F.C.A.

"Fire Insurance: Some Important Points and Technicalities." Lecturer, S. H. Davids. Chairman, E. H. Fletcher, F.C.A.

Debate with Law Students' Debating Society: "That 'municipal trading under the present conditions is detrimental to the national interests.'" (Held at the Law Society's Hall.) Chairman, E. B. Ames.

Discussion: "May 1905 Examination Questions." Openers, E. T. Fowell, A.C.A., W. T. Wood, B.A. Chairman, Francis W. Pixley, F.C.A.

"The Work of the Receiver and Manager in the early 'days of his appointment.'" Lecturer, W. H. Fox, F.C.A. Chairman, G. Sneath, F.C.A.

Joint debate with Bristol Chartered Accountants Students' Society: "Mock meeting of shareholders." (Held at Bristol.)

Discussion on Report of Departmental Committee on Income-tax. Opener, A. F. Dodd, F.C.A. Chairman, H. Woodburn Kirby, F.C.A.

Reading of Junior Prize Essay: "The Rights and Duties of a Trustee under a Deed of Arrangement." By E. T. Wilkins. Chairman, E. E. Price, F.C.A.

"After the War in the Far East: a Study in Commercial Geography." Lecturer, H. J. Mackinder, M.A. Chairman, J. Dix Lewis, F.C.A.

Sixth Annual Dinner. Chairman, G. Walter Knox, B.Sc., F.C.A.

Joint debate with Leicester Chartered Accountants Students' Society: "Mock meeting of shareholders." (Chairman, W. C. Northcott.)

Your Committee desire to record their thanks for the services rendered to the Society by the above-named gentlemen.

5. The Special Classes for the preparation of candidates for the Intermediate and Final Examinations, held during 1905, have been conducted by Professor L. R. Dicksee, F.C.A., Messrs. Herbert Jacobs, Barrister-at-Law, and Percy Child, A.C.A. The Committee regret that owing to illness Mr. L. Cuthbert Cropper has been abroad for a considerable period, but it is hoped he will shortly resume his classes, which in his absence have been taken by Professor L. R. Dicksee.

The following table shows the percentage of those attending the Classes who passed the Intermediate and Final Examinations; also the percentages of the total number of candidates attending the Examinations who passed:—

	Percentage of Classmen Passed.	Places in Honours List.	Whole Examination Percentage Passed.	In Hono'rs List.
<i>Intermediate:—</i>				
May .. 60·87	—	60·60	..	12
November 90·0	15th and 17th places	62·17	..	18
<i>Final:—</i>				
May .. 75·0	1st place	57·80	..	14
November 78·57	—	62·56	..	13

6. The following members of the Society obtained certificates of merit at the Examinations in 1905, and the Society's prizes were awarded as indicated:—

## MAY FINAL.

W. Whitfield ..	..	1st	..	Prize £10 10 0
E. T. Fowell ..	..	5th	..	.. 3 3 0
G. C. Harrison ..	..	8th		
A. E. Cutforth ..	..	} 11th (bracketed)		
S. Pedder ..	..			

## NOVEMBER FINAL.

W. D. Webster ..	..	6th		
F. R. M. de Paula ..	..	8th		

## MAY INTERMEDIATE.

W. T. Wood, B.A. ..	..	2nd (bracketed)	Prize £5 5 0
W. C. Northcott ..	..	4th	.. 3 3 0
R. C. Martin ..	..	6th	

## NOVEMBER INTERMEDIATE.

A. C. Anderson ..	..	2nd (bracketed)	Prize £5 5 0
H. M. Williams ..	..	9th	do.
F. H. Agar ..	..	15th	
S. A. Gantner ..	..	17th	
G. A. Roberts ..	..	18th	

7. The Free Classes in Bookkeeping, Accounts, and Auditing, and in Law, have been held, as usual, during the year, and have been well attended.

Examinations were held in connection with these Classes, and the following prizes in books were awarded:—

SPRING SESSION.				£	s	d
R. Stephens ..	..	..	Bookkeeping	1	1	0
R. J. Knight ..	..	..	"		10	6
W. J. Dowdell ..	..	..	Law	1	1	0
R. J. Knight ..	..	..	"		10	6

## AUTUMN SESSION.

C. H. Brook ..	..	..	Bookkeeping	1	1	0
A. E. Jones ..	..	..	"		10	6
W. J. Dowdell ..	..	..	Law	1	1	0
R. J. Knight ..	..	..	"		10	6

8. During the Spring Session your Committee announced the following Junior Essay Competition:—

"The Rights and Duties of a Trustee under a Deed of Arrangement."

Four essays were received, and Mr. A. F. Whinney, F.C.A., who kindly acted as arbitrator, placed that of Mr. Ernest T. Wilkins first, who was consequently awarded the

first prize; the second prize was awarded to Mr. H. R. Horsley, B.A.

9. The following gentlemen represent the London Society on the Joint Committee of the Union of Chartered Accountant Student Societies, viz.:—

E. E. Price, F.C.A.  
E. James, A.C.A.  
H. Lanham, A.C.A.  
L. P. Williams, A.C.A.  
W. C. Northcott.

Meetings of the Joint Committee have been held during the year at Manchester and Liverpool, at which the London Society was represented by Messrs. Price, James, and Northcott. At the former meeting Mr. E. E. Price resigned the Chairmanship of the Committee and Mr. A. F. Dodd, F.C.A., of Liverpool, was selected to succeed him. At the Liverpool meeting Mr. H. Lanham resigned the Honorary Secretaryship and was succeeded by Mr. G. H. Redfern, A.C.A., a member of the London Society. Both Messrs. Price and Lanham had held office since the formation of the Union of Student Societies, and have worked indefatigably in its interests. Your Committee believe that all the Associated Societies have benefited by the work of the Union—particularly the smaller Societies in the provinces.

During the Autumn Session the Committee of the Union announced the following Essay Competition—

“The difference in Constitution and Relative Advantages of Private Firms and Limited Companies, and the Matters of Account involved by a Conversion.”

The result of the Competition has not yet been announced.

10. The Committee have again to express their thanks to the Institute of Chartered Accountants for the annual grant made by them to this Society.

11. The Library extension scheme is now in full working order and has proved very advantageous to those members of the Society reading for the Institute Examinations.

12. The sixth annual dinner was held at the “Hotel Cecil,” on 30th November last, when about 130 of the members of the Society and their friends were present. Mr. G. Walter Knox, B.Sc., F.C.A., kindly took the chair, and was supported by the Vice-President of the Institute and several members of its Council. The large increase of the attendance at the dinner, and the increased interest shown in the Society during the year, has been most gratifying to the Committee.

13. It is with regret the Committee have to announce that since the last General Meeting, Messrs. F. R. Acton, T. W. Hall, and S. Pedder have resigned their positions as members of the Committee.

14. Since the last Report vacancies on the Committee have been filled (under Rule 4b) by the election of Messrs. A. C. Anderson, G. A. Phelps, J. R. Tulloch, and E. T. Wilkins as ordinary members.

15. The Committee regret to announce the death of Mr. P. Cheyney Plowman, A.C.A., who was for two years a member of the Committee, and has on many occasions assisted the Society at its meetings and debates.

16. During the year the Secretary made application for an increase in his remuneration, which your Committee, in part, agreed to. This, and the increased cost of stationery owing to the alterations in the Rules, accounts for the deficit, but your Committee hope by the exercise of the strictest economy to considerably reduce this during the coming year.

17. The President, Edwin Waterhouse, M.A., F.C.A., and the Vice-Presidents, W. H. Fox, F.C.A., John G. Griffiths, F.C.A., and Frederick Whinney, F.C.A., retire, and are eligible for re-election.

18. The following members of your Committee retire, and are eligible for re-election:—

A. C. Anderson,  
G. A. Phelps,  
J. R. Tulloch, and  
E. T. Wilkins.

The following officers, viz.:—

*Honorary Treasurer* .. E. E. Price, F.C.A.  
*Honorary Auditors* .. H. A. Plumb, F.C.A., and J. W. Woodthorpe, F.C.A.,

also retire, and are eligible for re-election.

19. The Statement of Accounts for the year 1905, duly audited, is appended.

By order of the Committee,

W. C. NORTHCOTT,

Chairman.

London, 6th April 1906.





The Chairman, in moving the adoption of the Report and Accounts for the year ended 31st December 1905, congratulated the Society on its continued good work and increase of members.

Mr. W. C. Northcott, Chairman of the Committee, seconded the resolution, which was unanimously carried.

The following officers were re-elected:—

President: Edwin Waterhouse, M.A., F.C.A.

Vice-Presidents: W. H. Fox, F.C.A., J. G. Griffiths, F.C.A., F. Whinney, F.C.A.

Hon. Treasurer: E. E. Price, F.C.A.

Hon. Auditors: H. A. Plumb, F.C.A., J. W. Woodthorpe, F.C.A.

The following members of the Committee were re-elected:—

A. C. Anderson, G. A. Phelps, J. R. Tulloch.

Mr. W. L. Threlford was elected a member of the Committee.

The meeting was concluded with a hearty vote of thanks to Mr. Fox for presiding.

### Royal Statistical Society.

A PAPER on "Dealings in Futures in the Cotton Market," by Professor S. J. Chapman, M.A., and Mr. Douglas Knoop, B.A., was read before the Royal Statistical Society at its meeting on 24th April.

The paper was concerned with the effect of speculation upon prices in developed markets, or, as the question is sometimes stated, the effect of "futures," since by the arrangement made to facilitate future transactions, speculation is made easy. Methods of measuring steadiness of prices were discussed, and it was decided that, for the purposes of the investigation in hand, at least the three following methods must be used together—namely, the standard deviation, the mean daily (or weekly) movement, and the range of movement. The three methods commonly used for determining the effect of "futures" on prices (namely deduction, the method of concomitant variations, and the method of difference) were examined in turn. Deduction, it was pointed out, could not prove that benefit results to the market from "futures" if dealing syndicates frequently used them to tamper with the market, and if the influence of the public, who were ignorant and subject to panic and sanguine fits, was great. The method of concomitant variations took measurements of price steadiness over a long period, and argued that changes were due to the greater use of "futures," since in the period "futures"

had played an increasingly important part. But other concomitant changes had taken place also. However, the authors calculated indices of price steadiness from 1868 to 1905 (namely, the mean weekly movements, the standard deviation, and the range of movement), and found that, when expressed as percentages of the average price, they all tended upwards for about the last seventeen years. In these years the dealing syndicate had been growing in influence, and it was therefore the probable cause. But it did not follow that prices would not be much more unsteady without the use of any "futures" at all, and at any rate the "futures" would assist the shifting of risks even if they increased them. A brief comparison of price movements at Liverpool, Bremen, New Orleans, and Havre yielded no results, because of the telegraphic connections between the markets. Finally, the authors tried a new line of investigation based on the variable relations between "spot," and "near" and "distant" futures. It was argued that the several "futures" and "spot" were in some degree independent variables, and that the gaps between them varied with the conscious or unconscious "bulling" or "bearing" play of "futures" on "spot," as well, no doubt, as with other incidents. By the conscious play of the "futures" was meant the effect of their deliberate use to "bull" or "bear" the market, and by their unconscious play was meant the reaction upon the price of "futures" of the general judgment that "spot" was high or low in relation to supplies and demand. An elaborate series of correlatives between price levels in relation to the average of the year or the average of the crop year still to run, or a part of it, and different measurements of the gaps between the several "futures" and "spot," led the authors to the conclusion that as regards the effect of "futures" upon prices in each crop year nothing could be proved one way or the other from the line of investigation. It could not be shown that the "bulling" corresponded most with low-price levels and "bearing" with high-price levels. Inference from the facts examined, it was suggested, was probably rendered impossible because they were the intermixed effects of many causes. But as regards the bridging of the price level of the two contiguous crop years, it was argued that on the whole "futures" were having steadying effects. They probably tend to cause smooth transitions of price.

The practical conclusion of the paper was that nothing certain can be proved as to the effect of "futures" in price steadiness, though there was some evidence to show that prices had been getting unsteadier in the last seventeen years. The disturbing elements were the gambling public, and the tampering with the market (*i.e.*, buying to raise price and selling to lower, instead of buying because prices are low and selling because they are high) by powerful interests.

## Reviews.

### Elementary Law for the General Public.

By A. D. TYSSSEN, M.A., D.C.L., Barrister-at-Law.

London, 1898: Wm. Clowes & Sons, Lim., 27 Fleet Street, E.C. Price 2s. 6d.

This volume, which is described as a popular handbook on money matters and property, deals with a variety of subjects which, if for the most part not specifically required by the Institute's examiners, are at least worth studying not merely on account of their intrinsic importance, but also because a correct understanding, at all events of the fundamentals of the various problems involved, will be found to effect a very material saving of the candidate's time at a later stage. The work consists of twenty-two chapters, dealing with such subjects as money, sales of goods, accounts, shares in companies, equitable interests, copyhold and freehold land and interests, sales of land, mortgages, real and personal estate, personalty, settlements, wills, and the like—all of which are dealt with in language sufficiently non-technical to be readily understood by the average layman, while at the same time sufficiently precise to avoid the formation of incorrect ideas.

### Handbook of Executorship Law, with the Mode of Keeping Executorship Accounts.

By RANKING, SPICER, and PEGLER.

London, 1906: H. Foulks Lynch & Co., 9 Fenchurch Street, E.C. Price 12s. 6d. net.

This is virtually a new edition of Ranking and Wiseman's "Executorship Law and Accounts," with which doubtless many of our readers are familiar, but owing to changes in the *personnel* of those responsible for the Accounts Section it has been issued under a new title. There are, of course, also numerous alterations and several important improvements, which combine to justify the course adopted. The volume is what it professes to be, a coach's handbook, and judged from this standpoint it would be extremely difficult to find fault with it in any particular. It must be admitted, however, that the standpoint is not a very exalted one, and that something more extensive, and therefore of greater permanent value, might well have been looked for in view of the comparatively high price charged. The size of the work—8½ by 11 inches—is, moreover, inconvenient from the students' point of view, and appears unnecessary, in that all the forms employed might quite easily have been compressed into a smaller page.

## New Rules.

### UNDER COMPANIES ACTS (WINDING-UP).

1. The following rule shall be read as one of the Companies (Winding-up) Rules, 1903, and shall be cited in the body of those rules as Rule 27A:—

If the petitioner, or his solicitor, does not within the time prescribed by Rule 27 of the Companies (Winding-up) Rules, 1903, or within such extended time as the Registrar may allow, duly advertise the petition in the manner prescribed by the said rule, the appointment of the time and place at which the petition is to be heard shall be cancelled by the Registrar, and the petition shall be removed from the file in the Companies (Winding-up) Office, unless the Judge or the Registrar shall otherwise direct.

2. The following words shall be added to Rule 170 (2) of the Companies (Winding-up) Rules, 1903:—

Provided that the Official Receiver, when acting as liquidator, may, without taxation, pay and allow the costs and charges of any other person other than a solicitor, employed by him, where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of £2: provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

3. These rules shall come into operation on the 18th day of April 1906.

(Signed) LOREBURN, C.

I concur,

(Signed) D. LLOYD-GEORGE,

President of the Board of Trade.

13th March 1906.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, April 20th, was 107, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 40; Deeds of Arrangement registered, 67. The respective numbers in the corresponding week of last year were: Bankruptcies, 96; Deeds of Arrangement, 82—total, 178; being a decrease of 71. The total number of commercial failures recorded during the 16 weeks of the present year is 2,683; the total number recorded in the corresponding 16 weeks of last year was 3,032, showing a decrease of 349.

The number of Bills of Sale, including Re-registrations filed in England and Wales for the week ending Friday, April 20th, was 84. The number in the corresponding week of last year was 162, showing a decrease of 78. The total number filed during the 16 weeks of the present year is 2,462; the total number filed in the corresponding 16 weeks of last year was 2,782, showing a decrease of 320.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, April 20th, amounted to £442,938, by way of addition to £835,591, previously issued by the same companies. The amount registered in the corresponding week of last year was £899,593 showing a decrease of £456,655. The total amount registered during the 16 weeks of the present year was £24,936,552 (in addition to the issues in previous years by the same companies), as compared with £25,948,015 for the corresponding 16 weeks in 1905, showing a decrease of £1,011,463.

## The Profession in Scotland.

### Obituary.

The death took place suddenly at London, on the 12th March, of Mr. A. J. H. Robertson, C.A. Mr. Robertson became a member of the Edinburgh Society of Accountants in 1884.

The death took place of Mr. R. M. Muirhead, C.A., 53 George Street, Edinburgh, on the 17th inst., under peculiarly painful circumstances. On the forenoon of the day mentioned his body was found in his office at 53 George Street, under circumstances which pointed to suicide. He was last seen alive about 5 o'clock on the previous evening, when a clerk left him in the office. Mr. Muirhead, who was only forty-two years of age, became a member of the Edinburgh Society of Accountants in 1884, and was well-known in business and professional circles. He had been in poor health for some time past, and suffered from depression of spirits.

THE late Mr. Henry Douglas Eshelby, Chartered Accountant, Birkenhead (a director of the Southport and Cheshire Lines Extension Railway Company), has left estate entered at £136,712.

### Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
„ 21st „	..	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th „	..	..	..	..	..	..	3%
„ 28th „	..	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	..	3½%

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SATURDAY, MAY 5, 1906.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

#### The Annual Meeting of the Institute.

THE Twenty-fifth Annual Meeting of the  
Institute of Chartered Accountants in  
England and Wales was held on the 2nd inst.,  
and a full report will be found elsewhere in  
our columns.

According to the Council's Report the mem-  
bership of the Institute shows a satisfactory

net increase of 161 during the year 1905, while there has during the same period been an increase of 60 in the articles of clerkship registered. There is no doubt always some proportion of these articles which, for one reason or another, do not ultimately mature into applications for admission to the Institute, but as the number registered in 1905 was 318, and the total number of applications for admission was only 245, it will be seen that for the next five years at least the steady growth of the membership of the Institute is practically assured. A distinctly unsatisfactory feature, however, is the decline in the number of Fellows from 843 to 829. There can be little doubt that at least one-third of the 1,500 Associates in practice are eligible for Fellowship, and it is, we think, greatly to be regretted that these should not take up their proper position in the profession and contribute what may fairly be regarded as their proper share towards the cost of the upkeep of the Institute. It is, we think, well worthy of serious consideration whether it would not be desirable to appoint a small Committee to inquire as to the cause of this laxity on the part of so considerable a number of members, with a view to ascertaining whether any change of policy on the part of the Council might be reasonably expected to bring about an altered condition of affairs. In view of the fact that the difference between Associates and Fellows is represented by an increased fee of ten guineas, and a subscription of two or three guineas per annum, the question is one by no means devoid of financial importance, as an additional income of even one thousand pounds per annum would enable the Institute to materially improve its utility to members in outlying districts.

The examination results embodied in Para-

graphs 5 to 8 call for no very special comment at the present time, save that the number of certificates of exemption from the Preliminary Examination shows, we think, a step in the right direction, inasmuch as the objects which led to the institution of a Preliminary Examination are undoubtedly most fully achieved where the education of the candidate has been such as to entitle him to exemption. The statistics as to what is called the Special Final Examination, which appear in this Report for the first time, relate, of course, to the new Bye-law for the admission of non-articled candidates. From these we gather that during the past year five such candidates satisfied the examiners, but whether all have since been admitted members is not stated. It is notified that the "Robert Fletcher Prize," which was not awarded, will be again competed for at the Intermediate Examination to be held this month. That it should not have been awarded last November suggests that a somewhat high standard has been set up, which, of course, enhances the value of the prize itself.

Dealing with legislation, it is of interest to note that the Chartered Societies' Protection Bill has been re-introduced this session, but the chance of any private Bill becoming law seems remote. The Public Trustee and Executor Bill referred to in the Council's report has already been dropped, which is especially satisfactory in view of the eminently undesirable features that it contained. There seems some reason to believe that the Prevention of Corruption Bill may become law during the present session. The chances of the Limited Partnership Bill are, we think, considerably smaller; but, as we pointed out

in a recent issue, the matter is really not material unless and until some drastic alteration is made with regard to the law for registering all private companies.

On the subject of the Transvaal Accountants' Ordinance of 1904 it is, of course, absolutely necessary that the existing rights of members should be maintained, and that the interests of members residing abroad should be as far as possible safeguarded; but care should be taken not to unduly interfere with the accountancy profession in the various British dependencies dealing with their own problems in their own way. But obviously nothing must be done which would preclude an English Chartered Accountant from proceeding to some colony or dependency for the purpose of carrying out an English client's instructions.

We hope that our readers abroad will note the statement in Paragraph 17 as to the difficulty which the Council experiences in keeping in touch with legislation promoted in the distant parts of the Empire, and will accordingly at once advise the Institute of any such measures as may come within their knowledge.

On the subject of Departmental inquiries with a view to future legislation, the Report reminds us that Mr. J. GANE, F.C.A., represents the Institute on the Committee to inquire and report with regard to the Accounts of Local Authorities; Mr. W. B. PEAT, F.C.A., as to the Laws relating to the Administration of Insolvent Estates; and Mr. EDWIN WATERHOUSE, M.A., F.C.A., as to the Companies Acts. This last-named Committee has now been sitting some little time, and its

report may therefore doubtless be looked for at an early date.

The accounts for the past year show an increase in income of £112, and a reduction in ordinary expenditure of £87, in spite of the item of £206, allowances to Provincial Students' Societies, which appears for the first time. Extraordinary expenditure is represented by £43 15s., described as share of expenses incurred by the Chartered Bodies' Joint Committee, as against £158 7s. 7d. in 1904. The net result is an excess of income over expenditure of £3,178, as compared with £2,863 in the previous year.

As a result of the strenuous appeal made at the meeting on behalf of the Chartered Accountants' Benevolent Association, we understand that four or five members of the Council who were already Vice-Presidents or Life-Governors of the Association have announced their intention to pay an annual subscription of three guineas in addition.

We shall deal with the various other matters arising out of the meeting in our next issue.

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#### Local Authorities and Unauthorised Loans.

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THE decision of Mr. Justice FARWELL in the case of *The Attorney-General v. De Winton*, which appeared in our Law Reports last week, is one of considerable importance to all who are in any way concerned in municipal accounts and finance. It is unnecessary for us to recapitulate the terms of his Lordship's judgment, nor do we propose to take advantage of the opportunity to moralise upon what may be regarded as the political aspect of the question, although we might well be tempted

to do so by the attitude of a contemporary which asserts that our statement that the published accounts of local authorities do not always disclose the true position of affairs is one that has been often made but never proved. The points, however, upon which we propose to concentrate attention in the present article are the practical reasons for discouraging municipal overdrafts and the effect of the auditors' certificate.

With regard to the first of these questions, it is a condition of loans being authorised by the Local Government Board that they shall be for a term of years determined (albeit quite roughly) by the purpose to which it is proposed to apply the moneys about to be raised, and that, by means of a Sinking Fund, provision shall be made during each of the various years covered by that period for the redemption out of revenue of the loan by the date that it becomes payable. If the moneys are to be applied to the construction of something necessarily occupying time, the provision of the Sinking Fund instalments is generally allowed to be postponed for twelve months; but then, of course, the annual instalment in each successive year has to be increased *pro rata*, to compensate for the fact that there will be one instalment the less set aside. This practice of charging Sinking Fund instalments against current revenue is, as we have stated, a distinct condition upon which the loan was authorised in the first instance; and it also constitutes a distinct representation to investors in municipal stock, in that the security for their investment is improved by this provision for eventual redemption. In consequence loans can be obtained upon much more satisfactory terms than would be possible were the indebtedness

a permanent one, or were its redemption optional upon the part of the municipality. It will thus be seen that any failure on the part of the local authority to charge current revenue with the statutory Sinking Fund instalment would be a breach of faith, and would also directly cause the accounts to misrepresent the true position of affairs, in that the Sinking Fund instalment is chargeable whether, in point of fact, it has been charged or not.

Of course, when a loan has been regularly issued, the due provision for Sinking Fund could not be inadvertently overlooked; but no doubt, in cases where the issue of a loan has been postponed until a more favourable opportunity, and the necessary moneys have in the meantime been borrowed by means of a bank overdraft, the necessity for still providing the proper Sinking Fund instalments may sometimes be quite inadvertently overlooked. Be that as it may, the principle of financing by overdrafts, save within very narrow limits, undoubtedly is clearly undesirable, in that at the best it requires the loan, when eventually issued, to be issued for a shorter period than that sanctioned by the Local Government Board. The Sinking Fund instalments will—or at least should—in such cases not be determined by the actual period for which the loan was eventually issued. Therefore the checking of the accounts will be made proportionately difficult, and the risk of errors, both intentional and otherwise, will be materially increased. For these reasons the practice is very properly deprecated by the Local Government Board, even in cases where proper provision for the Sinking Fund instalments is made from the outset. In cases where this mode of finance has been employed with a view to avoiding the

proper charge of Sinking Fund instalments against Revenue, the Department has very naturally taken a somewhat serious view of the matter.

If, however, the system of finance by overdraft is undesirable where a loan has been duly sanctioned, *a fortiori* is it undesirable, and even improper, in cases where no such sanction has been obtained. If local authorities were to be allowed to decide for themselves whether and when they would apply for leave to borrow, there would, at all events in the meantime, be absolutely no guarantee that moneys borrowed for one purpose were not used for another, and that moneys were not actually borrowed for the same purpose two or three times over; while, of course, the further objection that in the meantime no provision need be made for the eventual redemption of debt would still obtain. For these reasons it is satisfactory to note that Mr. Justice FARWELL has seen his way to put a stop to such irregularities in the only way that can be practically effective—namely, by holding the treasurer personally responsible. In this particular instance, as in many others, the treasurer was the manager of a local bank having the account of the Corporation, and there can be little doubt that one of the results of this judgment will be peremptory instructions issued from headquarters to all bank managers to look very carefully into the matter of municipal overdrafts, and to see that they are in order. This stopping of the supply of unauthorised indebtedness will for obvious reasons be far more satisfactory than any steps that could be taken to eventually put right such irregularities as might from time to time be discovered.

Another distinctly satisfactory feature of the case now before us is his Lordship's finding

that the mere fact that the accounts had been certified by the auditors prescribed by statute did not estop interested parties from reopening those accounts with a view to correcting irregularities brought to light. Without expressing any opinion upon the question as to whether the auditors of the Tenby Corporation fulfilled their duties in an entirely satisfactory manner to all concerned, we may point out that there must in the nature of things frequently be cases in which irregularities that have taken place will not be brought to light as a result of the form of audit prescribed by statute. If, however, it were to be held that the conclusion of the audit was to operate as a bar against all subsequent inquiry into the transactions that had taken place, it would no doubt be a somewhat open question whether the institution of any form of audit that could be devised by statute was not upon the whole more dangerous than advantageous. Without going into the subtleties of the legal aspect of the matter, it is clear that where an agent is guilty of misconduct it would be in the highest degree ridiculous if he could plead as a perfect defence against all possible charges that another agent of the same principal who had been appointed to audit his accounts had been negligent, and that for that reason the matter could proceed no further. No one but a lawyer would give two thoughts to so fatuous an argument; but, for all that, it is distinctly reassuring to learn that, viewed from the purely legal standpoint, it is untenable.

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### Weekly Notes.

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**Bankruptcy Law Reform.** As is natural, the announcement that a Departmental Committee has been appointed to consider the desirability of amending the existing law with regard to the administration of



insolvent estates is proving productive of all sorts of suggestions—good, bad, and indifferent—in the columns of our contemporaries. So far the *Law Journal* appears to have established a good lead in the direction of something really desirable, and at the same time practicable. It points out that a study of the insolvency law of France and Germany would doubtless prove of value, and instances the fact that a failure to pay his debts incapacitates a French debtor from acting even as an agent or broker until he may rehabilitate himself by paying his creditors in full. Without perhaps going to this extreme it seems most desirable that serious consideration should be given to the question of the classes of occupations which are at present open in this country to undischarged bankrupts without any let or hindrance, and it may be pointed out that there can be no possible justification for an insolvency law which presses more hardly upon undischarged bankrupts following one particular class of occupation than upon those following another. So long, however, as so-called closed estates are to be handed over to Official Receivers, it is in the nature of things hopeless to expect that there will be any effective supervision of the conduct, occupation, or means of undischarged bankrupts.

**The Law's Delays.** Although there has been a material reduction in the list of arrears in the Chancery Cause Lists—the total at the opening of the present sittings being only 171, as against 228 a year ago—in every other Division that interests accountants the state of business is such as to more than warrant a retention of the heading with which we are accustomed to indicate the position of affairs at the opening of a new legal term. No fewer than 324 appeals now await decision, as against 215 a year since; and, although in the King's Bench Division the number of cases has been reduced from 803 to 774, this is more than compensated by the King's Bench appeals, which stand at 155 as against 62 a twelvemonth since. At the time of writing the House of Lords' List has not been published, but there seems no ground for supposing that it will indicate any improvement on the question of arrears. It will thus be seen that it is in the Chancery Division alone—that in which some years since the reproach on the question of the law's delays was greatest—that anything approaching a really satisfactory condition of affairs can be said to obtain. Some of our legal contemporaries profess to entertain concern at the prospect of there being insufficient work

for the Chancery Judges to do, and the probability, therefore, that they will have to fall back upon filling up their time with King's Bench non-jury cases. It will be readily understood, however, that the lawyer's ideal upon these points is never likely to be identical with that of the business man. From the point of view of the latter, and no doubt from that of all disinterested persons, it must be obvious that there should be no such thing as the law's delay. The Judges should be waiting for suitors rather than suitors waiting the convenience of the Court. If this desirable condition of affairs could ever be obtained there can be little question that the volume of litigation would be very greatly reduced, and the amount of money lost annually in litigation and its attendant costs would also be very materially less.

**Unclaimed Dividends.** A contemporary states it as a surprising fact that a large number of mining dividends, extending over several years past, are still unclaimed although the companies frequently publish in their reports long lists of names of claimants and the amounts due to them. It occurs to us that the explanation is that in the majority of such cases the registered holder has no interest in the shares, having sold them long since, although they may perhaps have been carried forward on the Stock Exchange almost indefinitely owing to the prevalence of speculative bargains in mining shares even in such times as the present. In view of the fact that the *bona fide* investor in mining shares would almost invariably hold a share certificate, it is inconceivable that in any material number of cases the possibility that there are unclaimed dividends, and therefore *a fortiori* that the shares are presumably of value, would be overlooked by the legal personal representatives of deceased shareholders.

**Specific Reserves.** The Atlas Assurance Co., Lim., which held its annual general meeting last month, is one of those few insurance companies which, instead of providing a large general Reserve disclosed upon the face of the Balance Sheet in addition to undisclosed Reserves, provides also specific Reserves to meet each separate kind of contingency likely to arise. The point is the more noteworthy in that it represents a policy which was only inaugurated some twelve months since, when the then existing Fire Insurance Fund was separated into a Reserve of £345,204 on account of unexpired risks, and a Fire Reserve Fund of £320,382, which amounts have since

been increased by £48,219 and £106,591 respectively. There is also a General Reserve Fund of £57,168.

**Banking Hours.** It is entirely characteristic of American methods of business that on the 1st inst. there should have been opened in New York a bank for the distinctive purpose of carrying on business continuously. This bank is to be known by the title of The Night and Day Bank, and for some purposes it might doubtless be found of real convenience provided only it possessed a sufficient number of branches to fairly cover the ground. If, however, as we understand is the case, the sole object of its existence is to enable capitalists to obtain forthwith such moneys as they may require to pay down deposits to secure the benefit of deals effected after dinner, it may well be questioned whether the movement does not constitute a further step in the direction of protecting huge monopolies and trampling upon the individual. It must be clear that a bank which is open twenty-four hours of the day, instead of seven or eight, can only be run at a figure considerably in excess of the ordinary cost; and, to compensate for this, large profits must be expected, which, it seems to us, can hardly be looked for by what old-fashioned financiers would regard as legitimate means.

**The Equitable Life Assurance Society.** The 144th annual general meeting of the Equitable Life Assurance Society was held on the 3rd inst., when the report and accounts of the directors to the 31st. December 1905 were submitted and approved. During the year 290 new policies were issued, assuring £256,960, and producing a net premium income (including single premiums) of £19,855. The total net premium income for the year was £190,947, while claims amounted to £366,526, showing that at all events during the year under review the operations of the Society are not expanding. The stability of the Society, and the excellent profits earned by it in the past are, however, sufficiently shown by the summary of claims paid during the year which is appended to the report, which shows that in one case £2,047 was paid upon the maturing of a policy for £400, and that in five other cases £35,998 was paid in discharge of policies of the face value of £8,500. The average age of the 114 policies which matured was 69 years, and they had upon an average been in force for 36½ years, by which time each £100 assured had upon an average been increased by bonuses to £239. It is of interest to note

that in spite of its age the Equitable is by no means old-fashioned upon the subject of audit, one of its auditors being a Chartered Accountant, and indeed no less a person than Mr. Frederick Whinney, F.C.A.

**Lady Lawyers.** The Queensland Legislature has recently passed an Act, which has received the Royal assent, enabling women to practise in that Colony as barristers, solicitors, or conveyancers. The matter is not merely of local interest, in that members of the Colonial Bar have the right to appear as advocates before the Judicial Committee of the Privy Council on appeals from their respective Colonies, and there will thus henceforward be nothing to prevent lady barristers from appearing on any appeal that comes to the Privy Council from Queensland. It must be conceded that there is something inconsistent in a law which allows women to appear as advocates before a tribunal which stands practically upon an equality with the House of Lords, while refusing to allow them to appear in the most trivial cases arising in this country.

**The Commercial Union Assurance Company, Lim.** The forty-fourth annual report and accounts of the directors of the Commercial Union Assurance Company, Lim., have now been issued, and will be submitted to the company at the general meeting to be held on the 9th inst. In the Fire Department the net premiums for 1905 amounted to £2,074,789, being an increase of £107,077 as compared with the previous year, while the losses paid and outstanding amounted to 45·2 per cent. thereon. £165,000 has been credited to Profit and Loss Account, leaving the Fire Fund at £2,248,679, against £1,983,004 at the beginning of the year. In the Life Department 1,672 new policies were issued, assuring £1,140,251, representing a premium income of £48,169. In addition 852 policies for £593,206 were issued before the Hand-in-Hand amalgamation was completed on the 30th June, in respect of which new premiums amounting to £15,831 were carried to the Hand-in-Hand Fund. Claims by death amounted to £152,958, while endowment policies amounting to £26,642 matured. The Life Insurance Fund now stands at £2,977,562, being an increase of £201,013 for the year. In the Marine Department the net premiums received amounted to £237,255. £20,000 has been transferred to Profit and Loss Account, and the Marine Fund increased by £43,023 to £594,693. In the Accident Department the net premiums were

£170,788, and resulted in a surplus of £30,018, which has increased the Accident Fund to £122,229. In the Leasehold Redemption and Sinking Fund Department the premiums amounted to £10,421. The Profit and Loss Account shows a credit balance of £201,499, out of which it is proposed to pay a dividend of 30s. per share free of income tax, in addition to 25s. per share paid last November, and to provide for an interim dividend of 30s. per share to be paid on the 9th November next.

#### American Banks.

Mr. Duncan M. Stewart, general manager of the Sovereign Bank of Canada, recently addressed the members of the Canadian Club, Boston, on the question of American banks as compared with Canadian institutions. In the United States a national bank might commence business on a capital as low as 25,000 dollars, the amount being regulated by the population of the place of establishment. One-half of this amount had to be paid up in cash, a sworn statement of the directors to this effect being accepted; thus the only positive proof of *bona fide* capital was the deposit of United States Government bonds to the par value of one-fourth of the bank's paid-up capital, viz., 6,250 dollars. In Canada the minimum capital required to be paid up was 250,000 dollars, and this had to be deposited in gold with the Dominion Government before a note could be issued or business of any kind transacted. In addition to this a list of *bona fide* subscriptions for stock in the bank to the extent of 500,000 dollars had to be filed, and as subscribers were liable for double the nominal value of their holdings the Canadian public had a guarantee of one million dollars—of which they knew 250,000 dollars had been paid in gold—before the institution opened its doors. The national banks of the United States were not allowed to open branches, hence the thousands of small banks scattered throughout the country, each a head office and a branch in itself; and, in the lecturer's opinion, this was a mistake, for where a community was rich the bank would have more loanable capital than it could safely invest, and the temptation to embark in doubtful enterprises was very great. On the other hand, if the community was poor, the available funds of the bank might not be sufficient to supply all their customers' wants. Rates of interest became high, but outside banking capital was not attracted. Mr. Stewart then proceeded to criticise the methods adopted in the States during crop movements, contending that when

the small western and southern banks withdrew their balances from the New York and Chicago banks, the latter should send their own promissory notes and add to the volume of money in circulation, instead of sending notes that were the equivalent of gold. In order to do this they had to call in money already in circulation, and then up went the interest rate. There was practically no incentive for the American national banks to issue notes. A tax of one-half per cent. was charged on circulation, secured by the 2 per cent. Government Consols, and 1 per cent. on circulation secured by other classes of Government bonds. The deposit of these bonds to the full amount of the note issue was, in his humble opinion, a hindrance. In Canada these matters of cash reserves were left to the prudence of the bankers, and he thought this freedom had done much to establish their banking and currency systems on the sound and efficient basis on which they found it that day.

#### City Ownership in Chicago.

Chicago citizens have decided that existing transit facilities be acquired, and that a bond issue of 75 million dollars be forthwith promulgated. The question of immediate operation by the city was decided adversely, for the necessary 60 per cent. rate was not secured. This reform is therefore temporarily delayed, but at the next attempt it will probably be carried. The following are given in an American contemporary as the correct voting figures:—

Total votes .. .. .	231,171
In favour of operation .. .. .	120,911
Against operation .. .. .	110,260

The proposition to issue \$75,000,000 in street railway certificates was carried by 110,008 to 106,669, the question of public policy obtaining 111,862 votes to 108,025.

#### Congressional Reforms.

Two joint resolutions have recently been passed by Congress which will, it is said, put a wholesome check on extravagance in public printing in the United States. It is interesting to learn that under the old system the maximum number of copies of a Government publication was always issued in a single edition. If the maximum was 150,000 50,000 volumes were allotted to the Senate and 100,000 to the House of Representatives, each member being "credited" with his *pro rata* share and "expected to push it into circulation"! The question of supply and demand was never considered, and the *general* value of

a publication ignored. The wastage was, of course, enormous. An American contemporary says that 200,642 copies of the special report on "Diseases of the Horse" were printed, yet 70,094 copies are still left in the House and Senate folding rooms, representing a cost, exclusive of plates, of 33,645 dollars. Similarly 13,300 sets of the bound volumes of the "Congressional Record" for the second session of the 58th Congress were ordered, but there are still on hand an undigested surplus of 8,795 sets, costing nearly 10 dollars per set! We are also told that the Government is actually renting three buildings at 13,600 dollars a year for the purpose of storing dead documentary matter! In future, all publications will be printed in two or more editions, so that the supply can be adjusted to the actual demand. It is expected that this will effect a saving of from 40 to 50 per cent. on the average publication.

### Current Law.

#### COMPANY LAW.

*In re Alfred Melson & Co., Lim.* Buckley, J.

Held that where debenture-holders are in fact carrying on the business of a company without any receiver having been appointed, a winding-up order may be made on a creditor's petition even although the assets of the company do not appear to be sufficient to meet debenture-holders' claims in full.—(*Times*, May 2.)

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### Points in Company Practice.

*(To the Editor of The Accountant.)*

SIR,—With reference to your issue of the 21st inst. there is a paragraph in the papers on "Points in Company Practice," page 510, which I should be glad if you or some of your readers would elucidate. The paragraph I refer to reads as follows:—

"The company would not be entitled to capitalise the losses accrued prior to incorporation, and, on the other hand, they would not be compelled to charge them against revenue, though doubtless, if wise counsels prevailed, they would adopt the latter course."

I was under the impression it was correct to debit such losses to Goodwill Account, and credit any profits either to Goodwill Account or place it to Reserve Fund.

Yours faithfully,

April 27th 1906.

INTERESTED.

[It seems to us that any item which is not charged against Revenue *must* be capitalised—at all events *pro tem.*—ED. ACCT.]

#### Licensing Act.—Compensation Fund.

*(To the Editor of The Accountant.)*

SIR,—I should be very glad if you would let me know whether, in your opinion, it is justifiable to capitalise the contributions by a brewery company to this fund.

I am aware of an instance where this has been done on the grounds, I am given to understand, that the value of the houses remaining is enhanced.

Yours faithfully,

April 28th 1906.

STUDENT.

#### Not Negotiable.

*(To the Editor of The Accountant.)*

SIR,—Will your legal contributor kindly inform me, in your next issue, whether the words "not negotiable," as printed on postal orders, have any significance—viz., when crossing a postal order is it necessary to again write "not negotiable" parallel with the crossing lines as is usual with cheques?

Surely the Post Office cannot mean the words to signify that postal orders cannot be passed from hand to hand where good title exists.

Thanking you for the information,

Yours truly,

JOHN J. MAGAURAN, A.C.A.

Killiney, 28th April 1906.

[The intention is undoubtedly to *prevent* postal orders being passed from hand to hand, but it seems doubtful whether the words "not negotiable" can have their statutory significance unless the order is also "crossed."—ED. ACCT.]

## The Audit System of the Local Government Board.

(To the Editor of The Accountant.)

SIR,—Since my communication of the 14th inst. was published in your journal I have been supplied, through the courtesy of the Hon. Claude G. Hay, M.P., with the subjoined table relating to the number of local authorities in England and Wales which had financial transactions during the year 1904-1905, and whose accounts were respectively (1) audited by the District Auditors, or (2) excepted under the general law and other enactments from the scope of the District Audit system.

It will be seen that the statement gives the particulars desired in a slightly different form. The President of the Local Government Board has agreed to issue it as a Parliamentary Return.

I am, Sir, yours faithfully,

E. A. R. ADAMS.

Shoreditch Town Hall, London, E.C.

28th April 1906.

Statement showing for London, for England and Wales, excluding London, and for the two together, the *approximate* number of the Local Authorities which had financial transactions during the year 1904-5, and the number of such authorities whose accounts were audited by District Auditors; also showing, in the case of the last-mentioned authorities, whether the period to which the audited accounts relate was a year or half a year.

### I.—AUTHORITIES WHOSE ACCOUNTS WERE AUDITED BY DISTRICT AUDITORS:—

(i) *Authorities whose accounts, as audited by the District Auditors, related to a period of twelve months—*

CLASSES OF LOCAL AUTHORITIES	Number of Local Authorities which had financial transactions during the year 1904-5 and exercised jurisdiction in areas in		
	The Administrative County of London	The rest of England and Wales	England and Wales
1. County Councils .. .. .	1	61	62
2. Joint Committees of County Councils .. .. .	—	4	4
3. The Lancashire Asylums Board .. .. .	—	1	1
4. Visiting Committees of County and Joint County and Borough Lunatic Asylums (a) .. .. .	9	61	70
5. Councils of Metropolitan Boroughs .. .. .	28	—	28
6. Town Councils (all accounts (b)) .. .. .	—	3	3
7. Town Councils (Accounts under the Education Act, 1902) .. .. .	—	320	320
8. Town Councils (Accounts as Port Sanitary Authorities) .. .. .	—	12	12
9. Urban District Councils, for districts other than boroughs (including accounts relating to education) .. .. .	—	818	818
10. Port Sanitary Authorities (Joint Boards) .. .. .	—	29	29
11. Parish Councils and Parish Meetings (c) .. .. .	—	6,517 (c)	6,517 (c)
12. Burial Joint Committees .. .. .	—	239	239
13. School Boards (d) .. .. .	—	180 (d)	180 (d)
14. Joint Boards and Committees not included above (e) .. .. .	1 (f)	273	274
15. Miscellaneous Authorities .. .. .	—	15	15
	39	8,533	8,572

(ii) *Authorities whose accounts, as audited by the District Auditors, related to periods of six months each—*

16. Overseers of the Poor, as far as regards the Poor Rate (g) [number of Parishes] .. .. .	112 (h)	14,646	14,758
17. Boards of Guardians .. .. .	31	626	657
18. Joint Committees of Boards of Guardians .. .. .	—	4	4
19. Managers of Poor Law School Districts .. .. .	4	4	8
20. Managers of Sick Asylum Districts .. .. .	2	—	2
21. Managers of the Metropolitan Asylum District .. .. .	1	—	1
22. Rural District Councils .. .. .	—	671	671
23. School Boards (i) .. .. .	1 (i)	9	10
24. Joint Boards and Committees not included above (h) .. .. .	—	19	19
25. Miscellaneous Authorities .. .. .	1	2	3
	152	15,981	16,133
Totals of I. (i) and I. (ii) .. .. .	191	24,514	24,705

### II.—AUTHORITIES WHOSE ACCOUNTS WERE NOT AUDITED BY THE DISTRICT AUDITORS:—

CLASSES OF LOCAL AUTHORITIES	Number of Local Authorities which had financial transactions during the year 1904-5 and exercised jurisdiction in areas in		
	The Administrative County of London	The rest of England and Wales	England and Wales
26. Visiting Committees of Borough Lunatic Asylums (l) .. .. .	—	19	19
27. Visiting Committee of City of London Lunatic Asylum (l) .. .. .	1	—	1
28. Corporation of London .. .. .	1	—	1
29. Receiver for the Metropolitan Police District .. .. .	1	—	1
30. Town Councils (Accounts, other than accounts under the Education Act, 1902, and in 12 cases, as Port Sanitary Authorities) (m) .. .. .	—	321	321
31. Lighting Inspectors .. .. .	—	26	26
32. Burial Boards .. .. .	—	216	216
33. Harbour, Pier, &c., Authorities (other than Town Councils, or Councils of Urban Districts not being Boroughs) .. .. .	—	54	54
34. Commissioners of Sewers, Drainage Boards, &c. .. .. .	—	289	289
35. Joint Boards and Committees (n) .. .. .	—	9	9
36. Miscellaneous Authorities .. .. .	9	64	73
Totals .. .. .	12	998	1,010
Grand Totals of I. (i), I. (ii), and II., counting once only the Authorities entered against headings 6, 7, 8, and 30 .. .. .	203	25,180	25,383

(a) See also headings 26 and 27. (b) See also heading 30.

(c) There were, in addition, about 8,000 Parish Councils and Parish Meetings which had no financial transactions during the year 1904-5, whose accounts, if they had had financial transactions, would have been audited by the District Auditors.

(d) See also heading 23. The Accounts of the School Boards were for periods from 25th March 1904 to the date of their abolition under the provisions of the Education Act, 1902, and the Education (London) Act, 1903.

(e) See also headings 24 and 25. (f) The Metropolitan Water Board. (g) The number of cases in which the Overseers submitted separate accounts relating to other rates cannot be stated.

(h) Parishes in City of London only.

(i) See also heading 13 and note (d). (k) See also headings 14 and 35.

(l) See also heading 4. (m) See also headings 6, 7, and 8.

(n) See also headings 14 and 24.

Local Government Board,

Whitehall, S.W.

11th April 1906.

**Trustee's Bonds in Bankruptcy.***(To the Editor of The Accountant.)*

SIR,—I understand that it is the general practice in connection with a trustee's bond in the bankruptcy of a firm to charge the whole of the premium thereon to the joint estate. Further, that this method is approved by the Board of Trade on the audit of the accounts. If my information is correct, is there any reason why the premium should not be apportioned over the joint and separate estates in proportion to the estimated value of assets in each case? The bond is taken out as much for the protection of the creditors of the separate estates as those of the joint estate, and I do not see why the former should not bear their due proportion of the expense. The practice, to my mind, would be very unfair in a case where the renewal of the bond became necessary solely by reason of the fact that there was some outstanding asset in one of the separate estates.

I shall be very glad if any of your readers will favour me with a reply to my query.

I am, Sir, yours faithfully,

30th April 1906.

STUDENT.

**Guarantors and Costs.***(To the Editor of The Accountant.)*

SIR,—A. owes to B. a debt bearing interest for which he has given security including, *inter alia*, shares which

have been registered in B.'s name. C. has guaranteed to B. the interest on the debt, and contends that the dividends received on the shares must in the first place be applied in payment of the interest. B. has incurred charges and expenses in connection with his security which, he contends, should be paid out of the dividends in priority to the interest, but which C. contends should be added on to the debt and bear interest.

I should be glad to have your opinion on the matter, and should be obliged if you could give it in your next issue with authorities.

Yours faithfully,

1st May 1906.

E. S.

**The Bermondsey Electric Lighting Accounts and the Local Government Board Auditor.***(To the Editor of The Accountant.)*

SIR,—The Borough Treasurer of Bermondsey has just published the audited accounts of this borough for the year ended 31st March 1905 (signed on the 18th day of January 1906), and has taken the trouble to include in his abstract the statutory accounts relating to the electricity works *as amended after audit*. The annexed table (pages 174 and 175) shows how the Net Revenue Account was amended by the district auditor at the date of passing the Profit and Loss statement :—

**METROPOLITAN BOROUGH OF BERMONDSEY.**

Dr.

NET REVENUE ACCOUNT for the year ended 31st March 1905.

Cr.

<i>Expenditure.</i>			<i>Income.</i>		
	£	s d		£	s d
To Interest on Mortgage Debt accrued due to date ..	2,801	2 2	By Balance from last Account ..	512	7 7½
To Instalments of Principal of Money borrowed ..	362	19 11	By Balance brought from Revenue Account (p. 172) ..	4,278	17 ½
To Payments to Reserve Fund ..	499	5 6		4,079	7 ½
To Rental of Land belonging to the Council appropriated for Electrical purposes, being an amount equal to the Repayment and Interest on £3,155 8s. 11d., part of Loan of £13,800 ..	128	7 6			
To Balance carried forward ..	1,000	0 0			
	800	0 0			
	£4,688	7 7		£4,688	7 7
	£4,591	15 1		£4,591	15 1

**MEMORANDUM.**

	Net Profit	Net Loss	Amount Transferred from Rate
	£ s d	£ s d	£ s d
At 31st March 1902 ..	—	1,205 2 3	1,205 2 3
Year ended 31st March 1903 ..	—	1,200 9 3	1,200 9 3
Do. 1904 ..	512 7 7½	—	—
Do. 1905 ..	1,028 15 6½	—	—
	818 1 6½		

from which it will be noticed that although the auditor has thought fit to make minor adjustments in respect of the costs of negotiating loans and the "Bad Debts Account," and to very properly debit the account with a rental value for appropriated lands, he carefully excludes the accrued liability for the debt service!

In your issue of the 21st ult. you exhibited the curious method which has been followed by the district auditor for the purpose of *correcting* the St. Marylebone Borough Accounts; but perhaps the foregoing still more curious style of "*amending*" accounts is worthy of the study of your numerous readers.

I am, Sir, yours most respectfully,

ANOTHER FELLOW OF THE INSTITUTE OF  
MUNICIPAL TREASURERS AND ACCOUNTANTS.

1st May 1906.

#### Stamped Receipts for Sums on Account.

(To the Editor of *The Accountant*.)

SIR,—I should be much obliged if you could inform me, through the columns of your valued paper, whether it is necessary to give a *stamped* receipt for remittances received from abroad; also whether it is necessary to give a stamped receipt for amounts received *on account*, or if a plain receipt would be valid for such transactions, the stamp only being used for the closing payment.

With thanks in advance for your courteous reply,

I remain, yours faithfully,

30th April 1906.

C. W.

#### Gas Companies and Depreciation.

(To the Editor of *The Accountant*.)

SIR,—Twice during the present year you have been good enough to discuss the above question at the suggestion of your correspondents, but as I feel that the subject is not yet by any means exhausted, I trust that you will allow me to raise a point which, so far, does not seem to have been noticed in your columns.

Whatever may be the intention of Section 35 of the Gas Works Clauses Act of 1871, and of the form of annual accounts contained in Schedule B of that Act, there can be no doubt that in practice gas companies frequently charge their Revenue Accounts with sums representing the depreciation of assets, and, indeed, I am informed that the practice is almost universal. It is true that the amount charged for depreciation is not shown separately in the accounts, but the operation is none the less effected in the following simple manner:—Take, for instance, the second item in the

statutory Capital Account, viz., "New Buildings, Manufacturing Plant, &c." At the close of the financial period a Journal entry is passed crediting the account to which the additions to new buildings and manufacturing plant, &c., during the year have been carried (pending their transfer to the general "Capital Account") and debiting the "Repairs and Maintenance of Works and Plant, &c.," Account with the amount required to be written off for depreciation; a similar transfer from the Capital Account to Repairs being effected in the case of the other accounts—e.g., "New Mains and Service Pipes," "New Meters," &c. &c. In fact, what is done is that a certain proportion of the sum which would otherwise be added to the debit side of the company's Capital Account at the end of the financial period is, so to speak, intercepted before it gets there, and distributed over the various headings of "repairs" prescribed in the statutory form of Revenue Account.

The question here arises as to how the amount to be charged for depreciation is arrived at, there being, of course, no separate account for each class of asset from which a fixed percentage might be written off. I believe that the general practice is to assume that the charge against revenue in respect of the various items of "repairs" should bear a fixed ratio to the number of cubic feet of gas sold. For instance, in the case of "Repairs and maintenance to works and plant" the ratio is practically agreed by gas experts to be at 4d. to the 1,000 cubic feet, and accordingly the amount charged for depreciation is the difference between the amount actually expended on repairs and the amount estimated to be the proper charge against revenue by applying the above method.

There is one other aspect of the question to which I should like to refer, if I am not trespassing too far upon your space. In the leading article of your issue of February the 10th you express the opinion that "if gas company directors were left free to make whatever provision they thought necessary or desirable for depreciation of plant it seems not unreasonable to suppose that there would, at all events in many cases, be considerable doubt as to whether consumers would ever receive the benefit of the sliding scale." But the reasonableness of this supposition depends upon the somewhat unreasonable assumption that directors and shareholders would prefer to go on piling up enormous secret reserves, which could be of no pecuniary benefit to themselves (except in the improbable event of the company's being wound

up), rather than to share with the consumers an immediate pecuniary benefit through the operation of the sliding scale. Indeed, the whole purpose of such provision for depreciation as I have indicated is that the subscribed capital of the company may be represented by assets which are fully equal in value to the amount of the capital expenditure, and which, by their revenue-earning capacity, may give to shareholders and consumers alike the fullest possible benefit which the sliding scale affords.

Whether accounts prepared in the manner above indicated comply with the provisions of Section 35, and whether they are, to use the language of the section, "as near as may be" to the form prescribed in the Schedule of the Act, are interesting questions to which I hope that answers may be forthcoming in your columns. In this connection I think that reference should be made to Section 122 of the Companies Clauses Consolidation Act of 1845, which provides that "before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking or any part thereof, and may divide the balance only among the shareholders." There has been no judicial decision as to whether this section is superseded by later legislation in the case of gas and water companies. My own impression is that it is so superseded, but this impression does not amount to a conviction. Indeed, my attitude upon the whole matter is that of a philosopher in pursuit of truth, and if the contentions advanced in this letter are proved to be groundless, it will be as interesting to me as if they were substantiated.

Trusting to be enlightened upon this, as I have been upon so many other matters in the pages of *The Accountant*,

I am, Sir, yours faithfully,

SPECTATOR.

#### Select Committees and Legislation.

*To the Editor of The Accountant.*

SIR,—Would you kindly tell me about what time the results of the investigations of the Committees sitting on the Companies and Bankruptcy Acts would be likely to become law? Would it be before November 1907?

Yours truly,

30th April 1906.

S,

[For obvious reasons it is impossible to say, but we should be inclined to put 1st January 1908 as the earliest likely date—assuming, of course, that anything is done.—ED. *Acct.*]

## The Institute of Chartered Accountants in England and Wales.

### The President's Dinner.

MR. JOHN GANE, F.C.A., the President of the Institute, gave a dinner in the Hall of the Institute on Tuesday evening last to the members of the Council. Among the guests (numbering about forty) invited to meet the members of the Council were Sir Alexander Henderson, Bart.; Mr. C. M. Barker, President of the Law Society; Professor Percy Frankland, President of the Institute of Chemistry; Mr. Henry Cockburn, President Institute of Actuaries; Mr. J. Cory Fell, President of the Institute of Patent Agents; Mr. Boydell Houghton; Mr. John Kerr; the Presidents respectively of the Edinburgh Society of Chartered Accountants, the Irish Institute of Chartered Accountants, the Association of Scottish Chartered Accountants in London, the Liverpool Society of Chartered Accountants, the Birmingham Society of Chartered Accountants, the Sheffield Society of Chartered Accountants, the Leicester Society of Chartered Accountants, the Nottingham Society of Chartered Accountants, &c. &c.

The gathering was a strictly social one. The loyal toast was proposed by the President, and Mr. Frederick Whinney, F.C.A., proposed the health of the President. Mr. J. G. Griffiths, F.C.A., as an old member of the firm of Deloitte's, in whose office the President's connection with the accountancy profession commenced, supported the toast.

The President suitably replied.

Sir Alexander Henderson, Bart., proposed the toast of the Institute of Chartered Accountants, and referred to the progress which the profession had made since the Institute's incorporation, and to the value of the advice given by its members in connection with commercial enterprise.

A capital programme of music was contributed, under the direction of Mr. Clive, by Miss E. Truscott, Miss E. Bevans, and Mr. T. Clare, while it is needless to add that the banquet was served in the excellent style so characteristic of the well-known City caterers, Ring & Brymer,



### Council Meeting.

At a meeting of the Council, held on Wednesday, the 2nd May 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—

Mr. John Gane, President, in the chair; Mr. W. B. Peat, Vice-President; and Messrs. W. Ashworth, J. H. Blackburn, W. Blease, T. Bowden, E. M. Carter, Ernest Cooper, Sir John Craggs, Mr. E. Edmonds, Sir Walter Fisher, Messrs. A. H. Gibson, T. Gregory, J. E. Halliday, B. W. Hardcastle, A. C. Harper, D. Hill, F. A. Jenkins, H. Woodburn Kirby, G. Walter Knox, A. O. Miles, F. W. Pixley, W. Plender, F. J. Saffery, T. G. Shuttleworth, G. Sneath, E. Waterhouse, T. A. Welton, F. Whinney, T. Wise, J. W. Woodthorpe, and F. J. Young.

The resignations of:—

Mr. J. P. Hodge, A.C.A., Chester;  
 „ W. H. Mapplebeck, A.C.A., London;

were accepted.

The Secretary reported the death of:—

Mr. Richard Black, F.C.A., Manchester.  
 „ W. D. Shimmin, A.C.A., Liverpool.

It was resolved that Certificates of Practice be issued to the following members:—

Bayley, Hugh (Stowell & Bayley), 62 King Street, Manchester.

Bell, Joseph (Parkinson, Mather & Co.), 8 King Street, Manchester.

Brandon, Noel Harold, 63 Coleman Street, E.C.

Champness, Clement Maurice (J. H. Champness, Corderoy & Co.), 103 Cannon Street, E.C.; and at 5 George Street, Plymouth.

Cocke, Alfred Louis, 11 Pancras Lane, Queen Street, E.C.

Critchley, Henry Samuel, 5 & 6 Magdalen Street, Oxford.

Davies, Ernest George, Rutland House, Rutland Street, Swansea.

Edge, Robert Beasley (Attlee, Edge & Co.), 114 Edmund Street, Birmingham.

Fletcher, Stephen (Fletcher & Fletcher), Crown Chambers, Salisbury.

Frank, Harold Edmund, 716 Salisbury House, London Wall, E.C.

Green, Francis Thomas (Nairne & Son), Rational Buildings, 64 Bridge Street, Deansgate, Manchester.

Grundy, Norman Denis (Everett, Morgan & Grundy), 44 King William Street, E.C.

Hale, John Albert Deakin (Deakin Hale & Co.), 14 Finsbury Circus, E.C.; and at Southend-on-Sea.

Harper, Reginald Tristram (Gaff, Harper & Co.), 53 New Broad Street, E.C.

Heaton, James Aspin (Heaton, Stride & Co.), 18 & 19 Ironmonger Lane, E.C.

Henderson, Ian Macdonald, B.A. (J. M. Henderson & Son), 2 Moorgate Street Buildings, E.C.

Hirst, William Henry, Britannia Buildings, 4 Oxford Place, Leeds.

Hugill, Harold Bertram (J. H. Hugill & Co.), 117 Leadenhall Street, E.C.

King, William Frederick, 4 Broad Street Buildings, E.C.

Lepine, Cecil Henry (Langton & Lepine), 12 Coleman Street, E.C.

Lovatt, William Henry, Colmore Chambers, 3 Newhall Street, Birmingham.

Morris, Henry Millner, 141 Fenchurch Street, E.C.

Mundell, Keith Hamilton, 105B Old Christchurch Road, Bournemouth.

Nicholson, Norman, 9 Exchange Street, Blackburn.

Percival John Edward (Maurice Jenks, Nye & Co.), 6 Old Jewry, E.C.

Rozelaar, Abraham (Sydney Cole, James & Rozelaar), 1A Frederick's Place, Old Jewry, E.C.

Sawers, James, 7 Union Court, Old Broad Street, E.C.

Skinner, John (Chas. W. Rooke & Co.), 46 Queen Victoria Street, E.C.; and at Birmingham.

Smith, Claud Eastlake, 34 Clement's Lane, Lombard Street, E.C.

Smith, John Walter Scott (Campbell, Smith & Co.), 94 Market Street, Manchester.

Simpson, Bernard Willett (Fidgeon, Simpson & Co.), Copthall House, E.C.

Stowell, Leonard (Stowell & Bayley), 62 King Street, Manchester.

Sutcliffe, Ernest (Harold Sadler & Sutcliffe), 7 Victoria Street, Liverpool; 20 High Holborn, W.C.; and Masonic Hall, Todmorden.

Timmins, Frederick Oliver, 109 Colmore Row, Birmingham.

Tyler, Robert Barlow, Gracechurch Buildings, 79½ Gracechurch Street, E.C.

Worthington, John Harold (Halliday, Pearson & Co.), District Bank Chambers, 13 Spring Gardens, Manchester.

A number of applicants were admitted members, and eleven Associates were elected to Fellowship. A list of those who complete their membership or Fellowship by the 17th inst. will appear in our issue of the 19th inst.

**Twenty-Fifth Annual Meeting.**

THE Twenty-fifth Annual Meeting of the Institute was held on Wednesday, the 2nd day of May, at the Hall of the Institute, Moorgate Place, London, E.C., Mr. JOHN GANE, F.C.A. (the President), in the chair.

**REPORT AND ACCOUNTS.**

1.—The Council have to report that, during the year ended 31st December 1905, 245 candidates applied for admission to membership, of whom 227 were admitted; 5 former members applied for re-admission, 3 of whom were re-admitted; 21 Associates were elected Fellows, 35 members died, and 13 members resigned. Under Section 20 of the Charter, 12 members of the Institute were excluded in consequence of non-payment of their certificate fees or subscriptions, 8 members for other causes, and one admission became void, in consequence of the entrance fee being unpaid.

2.—The number of members of the Institute on the 1st January 1906 was 3,399, as against 3,238 on the 1st January 1905, being an increase of 161. The variation is shown by the following tabular statement:—

MEMBERS	Members on 1 Jan. 1905			Additions in 1905.			Deductions in 1905.					Members on 1 Jan. 1906
	Admissions.	Re-Admissions.	Changes.	Total.	Deaths.	Resignations.	Exclusions and Admissions void	Changes.				
Fellows ..	843	1	—	a 21	865	24	6	5	b	1	829	
Associates in practice ..	1423	5	2	cd 131	1561	8	5	14	ae f	34	1500	
Associates not in practice ..	810	218	1	eg 14	1043	—	2	2	ch	154	885	
Members not in England or Wales ..	162	3	—	b f h 28	193	3	—	—	d j	5	185	
	3238	227	3	194	3662	35	13	21	194	3399		

- (a) 21 Associates in practice became Fellows.  
 (b) 1 Fellow became a Fellow not in England or Wales.  
 (c) 129 Associates not in practice commenced practice.  
 (d) 2 Associates not in England or Wales became Associates in practice.  
 (e) 11 Associates in practice became Associates not in practice.  
 (f) 2 Associates in practice became Associates not in England or Wales.  
 (g) 3 Associates not in England or Wales became Associates not in practice.  
 (h) 25 Associates not in practice became Associates not in England or Wales.

3.—During the year 318 Articles of Clerkship were registered, as compared with 258 during the previous year.

4.—The Council have held 23 meetings, and the following Committees 69 meetings during the year, viz.:—

Applications .. ..	5	Library and Publication ..	3
Examination .. ..	6	Parliamentary and Law ..	11
Finance .. ..	11	Students Societies' Grants ..	4
General Purposes .. ..	11	Special and Sub-Com-	
Investigation .. ..	10	mittees .. ..	8
			69

5.—Examinations were held during 1905, with the following results:—

	May and June 1905.			November and December 1905.		
	Passed	Failed	Total No. of Candidates	Passed	Failed	Total No. of Candidates
Preliminary ..	161	47	208	113	55	168
Intermediate ..	120	78	198	97	59	156
Final ..	100	73	173	125	73	198
Special Final ..	2	1	3	3	2	5
	383	199	582	338	189	527
	May and June			383	199	582
	Total			721	388	1109

6.—During the year certificates of exemption from the Preliminary Examination were issued to 66 persons who had passed equivalent examinations, as compared with 57 in the previous year.

7.—In accordance with the provisions of the Bye-laws, the Preliminary Examinations were held simultaneously in London, Birmingham, Manchester, and Newcastle-upon-Tyne.

8.—For the Final Examinations the Council awarded Prizes and Certificates of Merit as follows:—

**May.****Certificates in Order of Merit.**

- Whitfield, W. .. .. London.
- Wilson, P. McC., B.A. .. .. Leeds.
- Atkin, P. F. .. .. Nottingham.
- Williamson, H. .. .. Preston.
- Fowell, E. T. .. .. London.
- Dowler, F. .. .. Manchester.
- Beale, A. P. G. .. .. London.
- Harrison, G. C. .. .. London.
- Clothier, E. .. .. Stafford.
- Greaves, A. .. .. Bradford.
- Cutforth, A. E. .. .. London.
- Pedder, S. .. .. London.
- Gimson, H. .. .. Leicester.
- Grant, R. H. .. .. Newcastle-upon-Tyne.

(Continued on page 567.)

## THE INSTITUTE OF CHARTERED

Dr.

Income and Expenditure Account

Year ended 31st Dec. 1904.	EXPENDITURE.		
£ s d	£ s d	£ s d	£ s d
554 0 1	To EXPENSES OF MANAGEMENT:—		
2,236 1 6	Housekeeping, Fuel, Lighting, &c... ..	516 10 6	
947 15 10	Salaries of Secretary, Librarian and Clerks, and Pensions .. ..	2,446 15 9	
251 3 0	Printing and Stationery .. ..	771 18 8	
190 5 0	Advertising .. ..	137 16 0	
" " "	Law Charges .. ..	308 1 9	
279 18 2	Special Law Charges.. ..	132 4 9	
239 7 0	Railway Fares of Country Members of Council	265 11 4	
34 0 8	Postage and Carriage .. ..	179 19 2	
212 13 9	Repairs to Furniture and Fittings.. ..	51 8 6	
11 16 0	Repairs to Hall and Offices .. ..	29 4 0	
18 10 0	Report of General Meeting .. ..	11 16 0	
9 6 9	Subscription for Telephone .. ..	21 11 5	
270 8 5	Parliamentary Returns, &c. .. ..	8 16 4	
	Sundries .. ..	64 5 1	
5,255 6 2		4,945 19 3	
	To RENT, RATES, TAXES, &c.:—		
742 0 0	Ground Rent .. ..	742 0 0	
725 9 1	Rates and Taxes .. ..	792 12 6	
36 18 9	Insurance .. ..	37 11 0	
76 17 3	Corporation Duty .. ..	82 2 2	
1,581 5 1		1,654 5 8	
	To DEPRECIATION:—		
245 12 3	Furniture and Fittings .. ..	227 8 3	
131 14 9	Library .. ..	134 2 0	
377 7 0		361 10 3	
102 2 6	To TRANSFER TO HALL AND OFFICES—SINKING FUND	105 9 3	
200 0 0	To COPIES OF "THE ACCOUNTANT" FOR DISTRIBUTION	200 0 0	
	To ALLOWANCE TO THE CHARTERED ACCOUNTANTS		
250 0 0	STUDENTS' SOCIETY OF LONDON .. ..	250 0 0	
" " "	To ALLOWANCES TO PROVINCIAL STUDENTS' SOCIETIES	206 12 6	
	To EXPENSES OF EXAMINATIONS:—		
207 12 2	Printing, Stationery and Sundries .. ..	231 16 3	
137 7 8	Advertising .. ..	127 18 0	
1,013 13 5	Examiners' Fees .. ..	1,040 19 5	
46 11 2	Prizes .. ..	25 9 7	
1,405 4 5		1,426 3 3	
470 9 7	To BRANCH LIBRARIES .. ..	404 1 6	
9,641 14 9		9,554 1 8	
	To SHARE OF EXPENSES INCURRED BY THE CHARTERED		
158 7 7	BODIES' JOINT COMMITTEE .. ..	43 15 0	
9,800 2 4		9,597 16 8	
	To BALANCE CARRIED TO ACCUMULATED FUND:—		
2,863 17 10	Excess of Income over Expenditure for the year ended 31st December 1905 .. ..	3,178 5 7	
<u>£12,664 0 2</u>		<u>£12,776 2 3</u>	

## ACCOUNTANTS IN ENGLAND AND WALES.

for the year ended 31st December 1905.

Cr.

Year ended 31st Dec. 1904.			INCOME.					
£	s	d	£	s	d	£	s	d
			By ENTRANCE FEES:—					
			1 Fellow	at 20	Guineas ..		21	0 0
441	0	0	21 Fellows	" 10	" ..		220	10 0
2,278	10	0	226 Associates	" 10	" ..		2,373	0 0
<hr/>						<hr/>		
	2,719	10 0	By CERTIFICATE FEES, SUBSCRIPTIONS, &c.:—					
			Certificate Fees:—					
			466 Fellows	at 5	Guineas ..	2,446	10	0
			346 "	" 3	" ..	1,089	18	0
			8 "	" 2	" ..	6	6	0
			1 "	" 1½	" ..	1	11	6
			3 "	" 1	Guinea ..	3	8	0
3,582	12	0				<hr/>		
			538 Associates	" 2	Guineas ..	1,224	6	0
2,038	1	0	889 "	" 1	Guinea ..	933	9	0
<hr/>						<hr/>		
						2,157	15	0
			Subscriptions:—					
			42 Fellows	at 2	Guineas ..	88	4	0
			1,108 Associates	" 1	Guinea ..	1,158	3	0
1,174	19	0	22 "	" ½	" ..	11	11	0
<hr/>						<hr/>		
	6,795	12 0						
	1	1 0	By FINES ON RE-ADMISSION .. ..					
			By EXAMINATION FEES:—					
789	12	0	890 Preliminary	at 2	Guineas ..	798	0	0
844	4	0	367 Intermediate	" 2	" ..	770	14	0
739	4	0	864 Final	" 2	" ..	764	8	0
4	4	0	8 Special Final	" 2	" ..	16	16	0
<hr/>						<hr/>		
			1,119					
<hr/>						<hr/>		
	2,377	4 0						
	"	"	By FEES FOR CERTIFICATES OF EXEMPTION					
11,893	7	0				<hr/>		
	427	7 3	By INTEREST ON INVESTMENTS.. ..			11,998 7 0		
	8	6 6	By Sales of Library Catalogue .. ..			504 17 6		
	315	10 6	By HIRE OF ROOMS .. ..			252 0 0		
	17	6 5	By INTEREST ON SUMS PLACED ON DEPOSIT			15 8 6		
	2	2 6	By INTEREST ON SINKING FUND INVESTMENT			5 9 3		

£12,664 0 2£12,776 2 3

## THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES.

Dr.				Cr.			
Balance Sheet, 31st December 1905.							
	£	s	d		£	s	d
To SUNDY CREDITORS			2,026	5	9		
To SINKING FUND IN RESPECT OF HALL AND OFFICES			307	11	9		
To "ROBERT FLETCHER PRIZE" TRUST ACCOUNT..			1,080	0	0		
To " " INTEREST ACCOUNT			59	0	0		
To ACCUMULATED FUND:—							
Balance at 31st December 1904	..	60,423	9	0			
Add Excess of Income over Expenditure for							
the Year ended 31st December 1905	..	3,178	5	7			
			63,601	14	7		
By CASH:—							
At London and Westminster Bank, on Deposits	1,000	0	0				
At Bank of England, on Current Account	..	841	15	0			
In hand	..	..	..	13	1	2	
							1,853
By INVESTMENT AT COST ON ACCOUNT OF SINKING FUND:—							
£312 18s. 6d. National War Loan 2½% Stock..							307
By "ROBERT FLETCHER PRIZE" TRUST ACCOUNT:—							
£1,000 Central London Railway 4% Debenture Stock at Cost	..	..	..	1,080	0	0	
By INVESTMENTS AT COST, VIZ.:—							
£3,000 2½% Consolidated Stock	..	..	2,682	1	8		
£3,000 3½% India Stock	..	..	2,109	2	9		
£4,000 Local Loans 3% Stock	..	..	4,012	6	7		
£1,000 Metropolitan Water (B) 3% Stock	..	..	968	16	0		
£1,000 Great Western Railway 2½% Debenture Stock	..	..	..	905	13	5	
£1,000 Great Western Railway 4% Debenture Stock	..	..	..	1,409	6	1	
£1,500 Midland Railway 2½% Debenture Stock	1,965	4	3				
£1,000 North Eastern Railway 3% Debenture Stock	..	..	1,186	17	1		
£500 Lancashire & Yorkshire Railway 3% Debenture Stock	..	..	566	9	8		
£1,324 South Eastern Railway 3% Debenture Stock	..	..	1,499	5	3		
£1,340 South Eastern Railway 4% Debenture Stock	..	..	1,980	17	9		
By INTEREST ON INVESTMENTS ACCRUED DUE	..	..	18,686	0	6		
By SUNDRY DEBTORS	..	..	207	1	0		
By FURNITURE AND FITTINGS:—							
As per last Balance Sheet	..	..	2,274	2	4		
Further Purchases	..	..	..	10	16	0	
							2,057
By LIBRARY:—							
Less Depreciation	..	..	2,284	18	4		
As per last Balance Sheet	..	..	227	8	8		
Further Purchases	..	..	1,341	0	5		
			154	1	2		
			1,495	1	7		
Less Depreciation	..	..	184	2	0		
			1,860	19	7		
By HALL AND OFFICES:— Cost (per Balance Sheet of 31st December 1894)	..	..	41,561	8	0		
			287,074	12	1		

We have examined the above Accounts with the Books and Vouchers of the Institute, and certify the same to be correct. We have ascertained that the Certificates of the Debenture Stocks, as above, are deposited for safe custody at the Bank of England, whilst the Government Stocks are inscribed in their Books, and we have further compared the Balances at the Bankers with their Certificates.

London, 10th March 1906.

GERARD VAN DE LINDE, }  
E. HOBBS, }  
Chartered Accountants } Auditors.

## November.

## First Prize and Certificate of Merit.

Garnsey, G. F. . . . .	Walsall.
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## Second Prize and Certificate of Merit.

de Zouche, R. C. . . . .	London.
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## Certificates in Order of Merit.

3.	Haddon, R. C. . . . .	Bristol.
4.	Ashworth, H. . . . .	Manchester.
5.	Lunt, H. J. . . . .	Manchester.
6.	Webster, W. D. . . . .	London.
7.	Murgatroyd, G. B. . . . .	Manchester.
8.	de Paula, F. R. M. . . . .	London.
9.	Boss, J. G., Junr. . . . .	Newcastle-upon-Tyne.
10.	Hirst, W. H. . . . .	Dewsbury.
11.	{ Storrs, L. C. . . . .	Cardiff.
	{ Welch W. . . . .	Hanley.
13.	Nixon, H. H. . . . .	Leeds.

Prizes for the Intermediate and Preliminary Examinations were awarded as follows:—

## INTERMEDIATE.

## May.

Webb, A. R. . . . .	Manchester.
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## November.

Peake, H. O. . . . .	Manchester.
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## PRELIMINARY.

## June.

Carter, S. B. F. . . . .	Greenhithe.
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## December.

Dawson, C. J. . . . .	Birmingham.
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9.—Regulations have been framed controlling the administration of the Robert Fletcher Prize Fund and the award of the Prize. The Prize was competed for at the November Intermediate Examination, but was not awarded, as the only candidate who reached the standard required by the Council was over the age limit.

10.—During the past year grants have been made to six Provincial Students' Societies to assist them in organising, under the supervision of the Provincial Societies, a more extensive system of classes and lectures for the assistance and education of those articulated clerks preparing for the Institute's Examinations.

11.—The number of presentations during the year to the Library was 29.

The attendances at the Library have been as follows:—

For the year ended 31st March 1905 . . . . .	8,077
" " " 1906 . . . . .	8,203

There have been 4,795 attendances in the Members' Room, as against 4,341 in the previous year.

12.—The Chartered Societies Protection Bill, having for its object the provision of a simple procedure to restrain unauthorised persons from using the professional designations and distinctive initials recognised by the public as denoting membership of these Societies, which was introduced in the last session of Parliament, having been opposed was withdrawn. The Bill has been re-introduced this session.

13.—The Public Trustee and Executor Bill is again before the House of Commons. The Bill as it now stands contains a clause

which has been inserted by the promoters largely through the efforts of Mr. J. S. Harmood-Banner, F.C.A., M.P., a member of the Council, and which provides that the Lord Chancellor may make rules *inter alia* "in relation to the employment, with "respect to any trust, of bankers, solicitors, accountants, "brokers, and other persons who have been habitually employed "by the person creating that trust or in relation to that trust."

The Council are of opinion that the Bill is not in the interest of the public or the profession, and that all the requirements of the public in this direction are met by the provisions of the Judicial Trustees' Act, 1896. A Government Bill on this subject has recently been read a second time in the House of Lords. Both these Bills are receiving the attention of the Council.

14.—The Council last session lodged a petition in the House of Commons against a Bill introduced by an insurance company, under which powers were sought to enable it to carry on duties hitherto largely undertaken by members of the Institute.

On an undertaking by the promoters to amend the Bill, the Council withdrew their objection; but the Bill was subsequently thrown out on the third reading on general grounds.

15.—The Prevention of Corruption Bill and the Limited Partnership Bill, which are now before the Houses of Parliament, are receiving the careful attention of the Council.

16.—The Transvaal Accountants' Ordinance, which was passed by the Legislative Council of the Transvaal in 1904, has been continuously under the consideration of the Council during the past year. The Council applied that the Institute should be included amongst the Societies or Institutes of Accountants whose membership should be declared to be sufficient by the Bye-Laws of the Society for the time being in force to entitle to registration under the Ordinance. The Bye-laws contain a provision to this effect, but the Ordinance requires residence in the Transvaal as a condition of registration.

During the year the Council have been in correspondence with the Colonial Office and the Transvaal Society of Accountants with regard to the Ordinance, which seemed to them to place limitations on the rights of members of the Institute to proceed to the Transvaal by the direction of clients in England or elsewhere for the purpose of doing professional work in connection with the accounts of businesses there. In a letter from the Transvaal Society to the Secretary to the Treasury, Pretoria, dated the 7th October 1905, and forwarded to the Institute by the Colonial Office, the following paragraph occurs:—"The Council holds that only if such visiting accountant sets up an office here and holds himself forth to the "public as an accountant desiring professional work are they "entitled to take cognisance of him, and in such instances the "Council has taken up the position that the Ordinance makes "it illegal for the visiting accountant so to hold himself out "unless he first obtains admission to the Register."

The subject continues to receive the attention of the Council.

17.—Legislation with the object of obtaining registration for accountants has been promoted in Australia and other Colonies, and has received, and is receiving, the attention of the Council with a view to protecting the interests of members.

It is extremely difficult to keep in touch with legislation promoted in the distant parts of the empire, and the Council

appeal to members of the Institute practising or resident in Colonies in which legislation is proposed, to communicate at once with the Institute in order that the matter may not escape notice, and that the rights of members practising abroad may not be prejudiced.

18.—An application to the Privy Council for a Royal Charter of Incorporation by a Colonial Institute of Accountants has been refused.

19.—A Departmental Committee has been appointed by the President of the Local Government Board to enquire and report with regard to:—

- (1) The systems on which the accounts of Local Authorities in England and Wales are at present kept.
- (2) Generally as to the system on which the accounts of the various classes of Local Authorities should be kept, and in particular whether such accounts should be prepared on a system requiring the entries of receipts and payments to be confined, as far as possible, to actual receipts and payments of money or not.
- (3) The regulations which should be made on the subject, regard being had to the necessity for showing accurately the amounts raised by local taxation and the purposes for which they are expended.

The President of the Institute has been appointed a member of that Committee.

20.—The President of the Board of Trade has appointed a Committee to inquire into and report upon the effect of the laws in force in the United Kingdom in relation to bankruptcy, deeds of arrangement, and compositions by insolvent debtors with their creditors, and the prevention and punishment of frauds by debtors on their creditors. The Vice-President of the Institute has been appointed a member of the Committee.

21.—Mr. Edwin Waterhouse, F.C.A., was appointed a member of the Departmental Committee of the Board of Trade, which has been selected to enquire into the amendments necessary in the Joint Stock Companies Acts.

The points to which the attention of the Committee was directed are as follows:—

- (1) The growing practice of issuing companies without a prospectus.
- (2) The registration outside England of companies carrying on business in England and appealing to English investors.
- (3) The extension of the provisions of the Act of 1900 with regard to the registration of mortgages and charges to include all mortgages and charges, and not only those created since the 1st January 1901.
- (4) The amendment of Table A of the Act of 1862.

22.—The Council regret to have to record the death of Mr. Thomas Browning, F.C.A., Manchester, an original member of the Council, and Mr. Charles Beavers, F.C.A., Leeds. These vacancies have been filled by the election of Mr. Theodore Gregory, F.C.A., Manchester, and Mr. John Gordon, F.C.A., Leeds.

23.—The following members of the Council retiring under Bye-Law 4 are eligible for re-election:—

JOHN HARTLEY BLACKBURN,  
WALTER BLEASE,  
ERIC MACKAY CARTER,  
JOHN GANE,  
JOHN GEORGE GRIFFITHS,  
CHARLES FITCH KEMP,  
ADAM MURRAY,  
GEORGE SNEATH,  
THOMAS WISE.

24.—The Auditors, Mr. Gérard van de Linde, F.C.A., and Mr. Edward Hobbs, F.C.A., retire in conformity with Bye-Law 110, but are eligible, and offer themselves, for re-election.

25.—The Accounts of the past year, duly audited, are annexed to this report.

JOHN GANE,  
*President.*

4th April 1906.

The Report and Accounts having been taken as read the PRESIDENT then delivered his address as follows:—

#### President's Address.

The PRESIDENT, in moving the adoption of the Report and Accounts, said: I have to express on behalf of the Vice-President his regret that owing to his having to attend the first meeting of a Government Committee, upon which he is sitting for the purpose of inquiring into the bankruptcy laws, he is unable to be here to-day. He asked me also to suggest to the members that if they had any points connected with the laws of bankruptcy which they thought would be of advantage to be ventilated before the Committee they should send to the Secretary, Mr. Colville, any communications which they might have to make on the subject. I trust all you gentlemen who are interested in the bankruptcy laws will follow up that suggestion with some definite ideas as to what ought to be done. Gentlemen, as President for the time being I have now the pleasure to move the adoption of the Report and Accounts for the year 1905.

The financial condition of our Institute affords evidence of continued and satisfactory progress. The surplus of income over expenditure during the year was £3,178 5s. 7d.

As compared with 1904 the receipts show an increase of £112 2s. 1d., whilst the expenditure shows a decrease of £202 5s. 8d.

The reduction in expenditure is mainly accounted for by the non-recurrence of certain special charges in last year's accounts—such as the cost of the Autumnal Meeting Book, Revision of Bye-Laws, Advertising Bye-Laws in the *London Gazette*, Repairs to Hall and Offices, Share of Expenses of Chartered Bodies Joint Committee, &c. On the other hand, there are increases under the heads of Salaries and Pensions, Rates and Taxes, Law Charges, Special Law Charges in connection with the Transvaal

Ordinance, and a *new* charge against Income for Allowances to Provincial Students' Societies.

It is natural to expect that in a large Institution such as ours each year will have exceptional operations, if therefore any advantage would accrue from so doing it would *always* be difficult to ascertain the amount which might be considered as normal expenditure.

As regards membership, our numbers *increased* from 3,238 to 3,399, *after allowing* for losses through death, retirement, or other causes. It is *now* 3,480.

The number of candidates examined was 1,109.

The Balance Sheet shows that, at December 31st 1905, the investments at cost (exclusive of the Robert Fletcher Prize Fund and the Sinking Fund) amounted to £18,636 os. 6d., as compared with £16,182 os. 3d. at December 31st 1904. Subsequent investments during this year bring up the amount to a *present* total of £21,489 12s. 1d.

At our 1904 and 1905 annual meetings attention was directed to the *leasehold* character of our premises; it may therefore be of interest to our members to learn that the freeholders are contemplating a sale of their property. Their representatives have approached the Institute on the subject, but at present the matter has not gone beyond the bounds of preliminary consideration.

It is with deep regret that I refer to the serious losses the Council has sustained by the death of Mr. Charles Beevers and Mr. Thomas Browning. Mr. Beevers had manifestly been in failing health for some time prior to his decease, but Mr. Browning carried his eighty and odd years with such evident ease that the tidings of his death came as a great shock.

Members will have noted with pleasure that His Majesty the King has conferred the honour of knighthood upon a popular Past-President of this Institute, Mr.—now Sir—Walter Newton Fisher.

Coming now to a consideration of general matters, I allude first of all to the Joint Committee of the Chartered Accountant Societies. Whilst it is generally recognised that great advantage might accrue from joint action by all these Societies, there is a difficulty, not as yet surmounted, in attempting to assimilate the different Rules and Regulations. Mr. Harwood-Banner, M.P., Mr. Knox, and myself had the privilege in October last of being the guests of Mr. Carter, the President of the Edinburgh Society of Chartered Accountants, and we took the opportunity of informally discussing with him and with Mr. Richard Brown, the Secretary, some of the matters involved. Since that time I have had other informal interviews with Mr. Carter, and he is preparing certain suggestions which will be passed on for consideration by the proper Committee.

Members will have observed that in the notice convening

this meeting there is an announcement of the terms of a motion to be brought forward by Mr. E. D. White, the President of the Liverpool Society of Chartered Accountants, on the subject of registration for accountants. On this point I should like to tell you that there is a feeling that it would not be to the advantage of the Institute to discuss this matter at a general meeting until it has had the very full consideration of the Council. (Hear, hear.) Up to now that has not occurred. The matter has been mentioned; naturally it comes before us in a variety of ways, but up to now it has not been considered officially by the Council. I put this matter to Mr. White, and he very promptly recognised the peculiar position involved, and considered that we were perfectly correct in suggesting that he should defer any movement in connection with this matter until the Council themselves had very carefully gone into and examined all the points involved. Therefore you will not be asked to consider the motion of which notice has been given by Mr. White. (Hear, hear.)

Following the intimation given in last year's Presidential address, the Council has given financial assistance to six provincial Students' Societies. It is hoped that thereby encouragement will be afforded to students to attend regularly all the classes and lectures held for their special instruction and benefit. The Council's scheme of assistance may possibly require some reconsideration as time goes on.

It has been found that the privilege accorded to articulated clerks of using the Library and principal lavatories of the Institute has resulted in very serious inconvenience to members generally. So many complaints have been received as to the practical impossibility under present conditions of members obtaining information and comfortable accommodation in their own Hall that the Council has decided, as soon as practicable, to give articulated clerks the conditional use of certain rooms and lavatories in the basement of the building, by which they will have all needful facilities for study without trenching upon the privileges and comfort of our members.

Permit me to refer to the large number of Associates who, though qualified by having been in practice for five years to become Fellows, have hitherto failed to take up their Fellowships. Possibly in some instances this condition arises from pure forgetfulness, whilst in others the consideration of extra expense may be the deterrent; but from whatever cause it may arise, I appeal to such members to assume their proper rank in our body. The position of Fellow of our Institute is a very honourable one, which ought to be secured at the earliest possible moment. On this point the Secretary has just informed me that the applications for Fellowship during this current year show an increase.



The past year has been prolific in producing matter for consideration in connection with legislation in this country and in the Colonies on questions vitally affecting our interests.

First and foremost there is the Colonial private legislation which resulted in the Transvaal Ordinance of 1904, and the Bye-laws relating thereto. Partial reference to these was made by my predecessor, Mr. Harmood-Banner, M.P. I would remind you that the object of that Ordinance is to restrict the user of the title of "Accountant" in that Colony to certain persons registered under the Ordinance. All members of British and Irish Chartered Accountant Societies and Institutes are, under the Bye-laws, *ipso facto* entitled to apply to be registered, but, after the expiration of six months from the passing of the Ordinance, residence in the Colony became a condition precedent to registration. Difficulties have arisen already in connection with this condition. An action was brought by one of our members to compel the Transvaal Society to place his name on the Register, on the ground that his physical presence inside the borders of the Colony was sufficient to constitute residence. The Judge decided in favour of the Society, and gave a definition of the phrase "resident in the Transvaal" occurring in Bye-Law No. 7. He said it meant more than physical presence; it meant that a man was residing in the Transvaal and not merely that he was *in* the Transvaal. The member in question was subsequently admitted to registration on giving to the Society a sufficient assurance as to his residence in the Colony.

In order to keep in close touch with the questions arising out of the Ordinance and Bye-laws, your Council has been, and continues to be, currently advised by Colonial advocates and solicitors. Correspondence has also passed between the Council, the Transvaal Society, and the Colonial Office with the view of obtaining official information as to the scope and intention of the enactment. I will ask the Secretary to read to you three important letters on the subject. A reply to the last of them cannot be received for some months to come.

The SECRETARY then read the following correspondence:

Moorgate Place, E.C.,

1st November 1905.

DEAR SIR,—I should be much obliged if you would kindly state for the information of the Council of this Institute what construction the Council of your Society propose to place on the Transvaal Ordinance with regard to the following points, viz.:—

Assuming an English accountant were to proceed to the Transvaal by the direction of clients in England with the object of investigating the accounts of a business in the Transvaal, and that whilst there he limited the work he did to work that his clients in

England had entrusted to him, and in no way held himself out to be ready or willing to do the work of a public accountant, would he come within the restriction imposed by the Transvaal Ordinance or Bye-laws, even though he were to complete and sign his report or reports before he left the limits of the Colony?

Further, if he were—being engaged in practice in England, and having received instructions from a client in the Transvaal, or elsewhere in South Africa—to proceed to the Transvaal, and investigate the accounts of a concern there, would he be permitted to do so without infringing the Ordinance or Bye-laws, and could he then make his reports in the Transvaal or not?

Yours faithfully,

(Signed) GEORGE COLVILLE,  
Secretary

F. E. Roberts, Esq., Registrar,  
The Transvaal Society of Accountants.

The Transvaal Society of Accountants,  
123 Exploration Buildings,  
Johannesburg.  
10th January 1906.

George Colville, Esq.,

Secretary, The Institute of Chartered Accountants,  
England. Moorgate Place, London, E.C.

DEAR SIR,—Your letter of the 1st November 1905 was laid before a meeting of my Council held on the 8th instant.

For the information of the Council of your Institute my Council desire me to state:—

That assuming an English accountant were to proceed to the Transvaal by the direction of clients in England with the object of investigating the accounts of a business in the Transvaal and that whilst there he limited the work he did to the work that the clients in England had entrusted to him, and in no way held himself out as being ready or willing to do the work of a public accountant, he would not come within the restrictions imposed by the Transvaal Ordinance or Bye-laws, even though he were to complete and sign his report, or reports, before he left the limits of the Colony.

Further, that if he were—being engaged in practice in England, and having received instructions from a client in the Transvaal, or elsewhere in South Africa—to proceed to the Transvaal and investigate the accounts of a concern there he would do so without infringing the Ordinance or Bye-laws, and he could also make his reports in the Transvaal, if he desired to do so, so long as he did not hold himself out as practising in the Transvaal.

Yours faithfully,

(Signed) FREDK. E. ROBERTS,  
per A. E. M. S.,  
Registrar.

Moorgate Place, E.C.

5th April 1906.

DEAR SIR,—Your letter of the 10th January 1906 was yesterday under the consideration of the Council, and I am directed to thank the Council of your Society for the expression of their views of the proper interpretation to be placed upon the Transvaal Registration Ordinance, which (so far as they go) are satisfactory to this Institute.

The Council would be obliged for a further expression of the opinion of your Council upon the following questions, viz. :—

- (a) In case a member of the Institute happened, for either business, health, or pleasure, or for any other cause, to be temporarily in the Transvaal, and were asked to do work for a client, either English, South African, or a foreigner, could he undertake and complete such work in the Colony without being registered?
- (b) In case a member of the Institute visits the Transvaal in order to ascertain the prospects of establishing a practice there, what form of assurance of continued residence does the Council of the Society consider it is entitled to require from such members?
- (c) In case a company registered under Transvaal law appoint as auditor a member of the Institute resident outside the Colony, is he free to accept the appointment and perform his duties in the Transvaal without being registered?
- (d) In cases where registration is considered necessary, is it to be taken that, pending the decision of your Council upon an application for registration, a member of the Institute being in the Transvaal must refrain from describing himself as a public accountant on his office or otherwise?

In conclusion, I would point out that, in view of the fact that the Transvaal Ordinances relating to other professions contain no restriction as to residence, and that throughout the British Empire no such restriction exists with regard to the accountant or any other professions, the Council trusts that your Society would be prepared to accept a modification of the Ordinance in this respect in regard to qualified persons.

Yours faithfully,

(Signed) GEORGE COLVILLE,  
Secretary.

F. E. Roberts, Esq., A.C.A.,

Registrar,

The Transvaal Society of Accountants,  
123 Exploration Buildings,  
Johannesburg, Transvaal.

It will be observed that when tendering thanks to the Transvaal Society for the information and assurances contained in their letter of January 10th 1906, the Council took the opportunity of asking for specific information upon

certain other points in order that all ambiguities and misapprehensions as to the effect of the regulations and the construction which the Transvaal Society might place thereon should be cleared away.

Before leaving this subject I desire to state that the letter which appeared in *The Accountant* of October 7th 1905, over the signature "X.," headed "The Transvaal Ordinance worse than Kruger," did not emanate in any way from this Institute, and we disclaim any responsibility either for its publication or for the opinions it expressed. It should be noted that an editorial comment was appended to the letter in the following words:—"There are many assertions in "this letter which would have been better if accompanied "by chapter and verse."

I mention this letter because it was especially referred to as grossly unfair by the President of the Transvaal Society in his address to the members at their first annual meeting, and because it is very desirable that the Society should know that, whilst there may be for the moment some doubtful points to be cleared up between us, it is the wish of this Institute that its intercourse with the Society shall be characterised by fair and friendly feeling.

A Bill for the Registration and Regulation of Public Accountants in Tasmania, drawn upon much the same lines as the Transvaal Ordinance and containing restrictions as to residence, came before the notice of the Council, and, by the kindness of the Agent-General, personal representations were made respecting the same. The Bill, which however permitted British accountants to go the Colony for temporary work, did not pass.

One of the leading Guarantee Societies introduced a Bill last session under the provisions of which the Society could become Receivers in Chancery and thus act as competitors with ourselves, but we were able to arrange as to a satisfactory modification of the clause objected to. The Bill, however, did not get through the final stages.

The Chartered Societies Bill, the object of which, as my predecessor informed you, is to protect the members of twelve Chartered Societies incorporated for improving the status and training of the professions they represent from the frauds on the public and their members by unauthorised persons using their professional designations and distinctive initials, has again been introduced into the House of Commons. This Bill was blocked in the session of 1905, at the instance of the Society of Accountants and Auditors, who some months ago took credit for so doing.

From recent information received it is quite probable that the same course is being taken in this session. It seems a somewhat curious coincidence that the Society which is confessedly responsible for the failure of this very innocent Bill should be the very Society which recently failed on an interlocutory application in the Law Courts to obtain protection for its own title. The Bill is of such an honest

nature and so absolutely for the protection of the public that it is very difficult to understand how anyone can find a legitimate reason for opposing it. If the Society of Accountants and Auditors will introduce a Bill with the similar object of protecting its own members, I feel justified in stating that this Institute will agree not to oppose it, provided that the Society will likewise agree that their opposition to the Chartered Societies Bill shall cease. In some such way we might bring about a satisfactory solution of the difficulty hitherto experienced. The Chartered Societies seek no monopoly, and have certainly no desire to do anything to prejudice the interests of the Society of Accountants and Auditors.

The Public Trustee Bill, introduced into Parliament during this session, is not regarded by the Council as being in the interest of the public or of this Institute, notwithstanding an amendment of one of the clauses which Mr. Harmood-Banner, M.P., was successful in obtaining. Mr. Banner was persistent in opposing the Bill in all its stages. I understand that the Bill has now been dropped.

The Prevention of Corruption Bill and the Limited Partnership Bill are worthy of the close attention of our members; they will be carefully watched by the Council.

Two days ago I saw for the first time "A Bill to provide for the Audit of the Capital Accounts of certain Trusts." Our energetic ex-President, Mr. Harmood-Banner, is one of the M.P.'s responsible for introducing it. Briefly, it provides for a compulsory annual audit of trust accounts by a member of our Institute, a member of the Society of Accountants and Auditors, or by a bank manager. The auditor must send to each of the trustees, and to any beneficiary applying for the same, a certified report as to the correctness of the accounts, showing the properties of the trust estate, the names in which they stand, the names of the persons with whom the securities are deposited, and any other material particulars.

The Bill should commend itself to everyone as being absolutely in the public interest. That it may incidentally benefit our profession is a satisfactory feature from our point of view. Considering the multitude of instances of misappropriation of funds which have become publicly known during the last few years in connection with trust affairs, the Bill is not brought in a moment too soon, and any of our members having acquaintance with members of Parliament would do well to use their influence towards making this Bill become law. The Bill is down for second reading to-day.

As evidence of the growing importance of our body I point with great satisfaction to the fact that at the present time our Institute is represented on three Government Committees—viz., by Mr. Waterhouse on the Committee to amend the Companies Acts; by your President on the Committee to inquire into the systems of Accounts of Local

Authorities; and by your Vice-President on the Committee to inquire into the Bankruptcy Laws.

With regard to the first of these Committees it is greatly to be desired—as was mentioned by my predecessor at our last annual meeting—that Mr. Waterhouse may be enabled, amongst other matters, to obtain a satisfactory recognition of the rights of outgoing auditors, and to ensure that, in the absence of sufficient notice of motion to the contrary, the outgoing auditor shall be re-elected. As the law now stands the appointment of auditor is an annual affair, and it is competent for any shareholder at the general meeting of a company to propose as auditor for the ensuing year some person other than the retiring auditor. It may be said that, as a general rule, the retiring auditor is re-elected, but there have been many exceptions, involving considerable hardships to individuals and possible loss of credit to the companies concerned, where, for no apparent reason but possibly with some interested object, the retiring auditor has been passed over without notice of any sort.

Many of our members are under the impression that a member of our body may not accept an appointment from which another member has been unwillingly excluded. Although there is, as I am happy to know, an immense amount of good feeling amongst our members, in such cases no rule of etiquette can be said to exist, as the Council has no power under the Charter to enforce it; moreover, the source of action is not in the person elected but in the shareholders who elected him. In many of such cases of hardship the newly-elected auditor has to face the choice of accepting the appointment or of seeing it pass into the hands of some other person who was not the retiring auditor. All these considerations show the great necessity which exists for a statutory provision as to notice.

The Council has been able to support one of the members of the Institute in opposing an appeal against a decision in his favour by one of His Majesty's Judges. The circumstances were somewhat unusual. The member in question was appointed by the Court as receiver to protect the property of the debenture-holders, and was empowered by the order to borrow £500 for the purpose of preserving the property. He did borrow that sum in three amounts, and the debenture-holders themselves lent the money, taking formal charges on the property as their security. Eventually the assets realised were not sufficient, after paying the expenses of management and receivership, to satisfy the charges given to the debenture-holders, and they applied to the Judge that the receiver might be ordered personally to repay, with interest, the sums advanced by them on such charges. Their application failed, and they appealed. The Court of Appeal decided that there was nothing in the case to displace the receiver's *prima facie* right to be indemnified before the debenture-holders were entitled to receive anything.

On the subject of discipline I have to state that there have been very few exclusions or suspensions during the year. One of the suspensions was in the case of a member who gave a certificate relating to various vouchers, receipts, and paid cheques in some "bucket-shop" transactions. That certificate was considered by the Council to be an improper one, and calculated to encourage gambling in such transactions. Moreover, it was contained in a kind of prospectus, apparently issued broadcast, wherein special attention was directed to the fact that the figures had been certified by a Chartered Accountant.

I draw attention to the fact that in certain districts the names of some of our members are inserted in large type in the Post Office and Telephone Directories. Such insertions are almost invariably paid for, and the members so acting are unwittingly laying themselves open to a charge of advertising. The Societies in the districts where the practice is most prevalent have promised to invite members to refrain from the practice.

The Association of Accountants in Montreal celebrated last year the twenty-fifth anniversary of its incorporation, and your Council has sent a suitable letter of congratulation.

A few earnest words are necessary at this time with reference to the Chartered Accountants' Benevolent Association. I wish to commend to our members the powerful appeal which has recently been made by the President of the Association (Mr. Waterhouse) for further contributions or subscriptions. As an instance of the timeliness of the appeal, even if only as a reminder, I can quote my own case. I looked at the list and found I had only given twenty-five guineas. That amount shall be increased to fifty guineas, and one of my partners will likewise give a contribution. Suggestions have been made that the Institute should contribute directly to the Association, but the Council has no power so to apply the funds. The meeting of the Association will be held here at the close of our proceedings, and I have the authority of the President to invite any of our members to remain and hear what he has to say.

I am glad to know that the Chartered Accountants' Golf Club is vigorously flourishing. Golf is a game to be highly commended, as it not only interests the player but benefits him to a remarkable degree by affording reasonable outdoor exercise; whilst the system of equitable handicapping does away with all inequalities resulting from difference in skill and the effect of increasing years. In a word, old and young can compete with one another on satisfactory terms.

I wish to call the attention of the members to an Institution which has existed for nearly twenty years in our midst, and which has had the effect of enabling many members of the profession to make the acquaintance of each other—namely, "The Chartered Accountants' Dining Club."

This club meets as a rule at one of the principal restaurants

in London (lately the Savoy Hotel), and the subscription is only the nominal one of 10s. per annum.

I understand that a meeting of the Committee was held yesterday afternoon, when it was decided to increase the membership to 150 members elected by the Committee, not including the Council.

The cost of the dinners is 15s. each for members and £1 each for guests, which includes the dinner, the special entertainment which is always provided after the dinner, and refreshments during the evening.

The Club is well supported by the Council, in fact, with very few exceptions (one of them unfortunately being myself), we all belong to it. I trust that as a result of this rearrangement many applications for membership will follow.

In conclusion it will be seen that the Council and the various Committees of the Institute have had a busy year, and I venture to express the hope that their labours may have tended to the increased prosperity of our members generally.

I now beg to move the adoption of the Report and Accounts for the year 1905, and, in the absence of our Vice-President, I will call upon Mr. Whinney to second the motion.

Mr. FREDERICK WHINNEY, F.C.A., seconded the motion, and in doing so said he would like to say a few words on what had fallen from the President in reference to the Registration Bill. At one time registration and amalgamation were very much in his thoughts, and the matter was brought before the Council, and also before a meeting of the members. A vote was taken, and the members generally did not consider it desirable to amalgamate, but he for one had steadfastly before him the idea that practising accountants ought to be raised into a profession—a profession in which no one should be allowed to practise unless he was a member of a well-known Society, or could show that he was in practice as an accountant, and had been for a certain time. He had been all along, and still was, an advocate for registration with restrictive legislation, but there were a great many difficulties connected with it, and it was necessary to consult all the local Societies, as also the Scotch and Irish Societies, and take their views on the matter. Personally, he had taken part in the drafting of two or three Bills, and, if called upon, he intended to do the same in future. (Applause.)

The PRESIDENT then invited discussion.

Mr. C. P. CROOKENDEN, F.C.A. (London), said the President in his speech had referred to the fact that a good many Associates who had been in practice for five years had not taken up their Fellowship. He believed he was right in stating that the entrance fee was ten guineas and that the annual subscription was five guineas. It seemed to him

that this was rather a large subscription, and from the accounts now submitted the Institute appeared to have rather a superabundant income. It appeared that the only way to make an alteration would be to get some alteration in the Charter itself. He did not know if it would be worth while to consider whether the fees of the Fellows in practice should be reduced. He noticed from the accounts that they varied from five guineas down to two guineas. If a reduction were made he thought there would be a great many more Fellows, and he for one would certainly join the Benevolent Association. At present he thought the fee of five guineas for a London Fellow in practice was higher than it need be.

The PRESIDENT, in reply, said that no doubt Mr. Crookenden was aware that the fees and subscriptions were embodied in the Charter and Bye-laws. It would be a very awkward proceeding to attempt, at any rate for the present, any alteration, however desirable it might be.

Mr. T. DOUGLAS, F.C.A. (Johannesburg and London), said he would like, as one of the members of the Transvaal Society of Accountants, to acknowledge with gratitude the very sympathetic terms in which the President had dealt with the question of the Transvaal Ordinance that day. He was bound to say that the over-sea members of British Institutes or Corporations of Chartered Accountants had not always received such sympathy. He was also deeply grateful to the President for taking the opportunity of referring to that unfortunate letter which appeared last October. He was sure he was only voicing the views of those over-sea Chartered Accountants, whether members of this Institute or members of the other Scotch or Irish Chartered Accountants' Societies, when he said they were surprised that no notice was taken at the time that letter was written. They did not wish to cast any reflection, or to suggest any names, but it was perfectly obvious to some of them that that letter could only in part have been, however mistakenly, inspired by someone who had been very intimately in their midst, and he was very thankful to the President for being good enough to speak in the terms in which he had of a letter which was nothing more nor less—he ventured to say so in the name of his colleagues—than a gross libel. Most of them had left this country at the suggestion of clients, and their desire was to keep alive the principles, in their best fashion, that they had had inculcated in that building at all times. (Hear, hear.) Now, if he might be permitted, he would like to offer one or two other remarks. In the first place, he wished to ask what was covered by the special law charges. He had no desire to call in question legal action; he had no desire to suggest that this money had probably been spent *ultra vires*, seeing that the Institute's jurisdiction was limited to England and Wales. He threw aside all those questions for the purpose of coming to the kernel of the matter. They were

compelled as a Transvaal Institute or Society to test this question of residence at the instance of one of the members of this Institute. The case, fortunately for the members of the Transvaal Society, went in their favour, for this question of residence was not quite the simple matter which it appeared. It was probably comparatively simple on this side of the water; but on the other side, surrounded as they were by other Colonies which had no restrictive legislation, it was a matter of very serious importance to them to be able to see that nobody could absolutely wrest from them the fruits of their legislation. He wished to remind the members present—and he could not do it too strongly—that this Bill was not promoted by the Chartered bodies of South Africa. It was promoted by the Society of Accountants and Auditors. The Chartered Accountants tried to come to terms with them to see that they should give them a reasonable Bill, and—he spoke with intimate knowledge—they could have wrecked the Bill before the Select Committee, as was apparent from the evidence which was in the possession of the Secretary of this Institute. But the onus of wrecking a Bill which had in it all the elements that made for the lifting up of their profession abroad was too great for any one of them to take in hand, and they therefore made the best compromise they could under the circumstances. What was the compromise? In the original Bill, or the draft Ordinance, it was provided that for all time—he meant as long as the Bill lasted—members of the Incorporated Society, members of various Chartered Societies, and, he thought, of one or two Australian Societies holding a diploma, however received, however granted, *ipso facto* entitled them to admission. The Chartered Accountants, few in number, with some determination said “No; we will fight this; we will willingly insert them in the bye-laws if you like.” They could alter bye-laws, but they could not alter an ordinance once passed, at least not so easily. He could not help saying in the presence of Mr. Woodburn Kirby that if, when he came out to South Africa as the representative of the Council of the Institute, he had been good enough to consult the men on the spot he would have been able to do infinitely more than he did, instead of which he never had one single meeting of the body. He (the speaker) took him to the President of the Society and also to the lawyers, whose bill he saw had been paid, and they showed their desire to do everything they could, but there was no suggestion from Mr. Kirby as to what he wanted done so that they could have taken counsel together. He was sure they could have improved their bye-laws with his assistance, but they did not receive the benefit of his advice. On the other hand, he (Mr. Kirby) had no knowledge of the surrounding circumstances to be gathered from men on the spot. He (the speaker) was glad to think from the President's remarks that the matter might

be considered more or less buried, but he hoped, seeing they did not ask for law costs against Mr. Kirby's firm when they won, that he, at any rate, would spare the Institute any expense, which they could not help feeling must have been largely incurred for the benefit of one particular firm. There was one other question. Might he without any undue feeling of soreness ask if nothing could be done for the over-sea members? Was not it getting a little stale to turn round and say that they were limited by their Charter to England and Wales and were not prepared to go out and extend the benefits in another direction? He would give one illustration. Why could not some means be found, even with their limited Charter, by which those who were members of the Institute could have their pupils examined there? He did not raise this question for any personal reason. The members of the Incorporated Society were doing everything they could in this direction, and that was why they largely augmented their numbers from time to time. Children were examined by the Joint Board of the Oxford and Cambridge Local Examinations in Johannesburg. The Incorporated Accountants sent their papers to Cape Town, and there their candidates were examined, and he had no doubt they were going to do the same in Johannesburg. Surely, in terms of the Institute's Charter, they might either by an alteration of the bye-laws, or perhaps by one of those test cases of which they had heard that day, see whether it was not possible to use the Charter in order to do something for those who were over-sea. He put this as forcibly as he could in their own interests as Chartered Accountants. It was time they did something, or else they would see the Incorporated Accountants growing in strength. (Applause.)

The PRESIDENT, in reply, said a suggestion had been made—and he thought it was a very suitable one—that as Mr. Douglas was over here, it would be very advantageous for both bodies if he could attend a meeting of the Parliamentary and Law Committee of the Institute and discuss the matter. (Hear, hear.) He was much obliged to Mr. Douglas for his criticism of the accounts, but, as a matter of fact, the Institute had paid nothing in respect to any other firm's law charges. Any costs they had paid had been absolutely incurred in watching the interests of the Institute.

The motion was then put and carried unanimously.

The PRESIDENT said the next business was to elect members of the Council in the place of those retiring. He happened to be one of the retiring members, and he would ask some other gentleman to propose the resolution.

Mr. E. D. WHITE, F.C.A. (Liverpool), said he had very much pleasure in proposing that the following members of the Council be re-elected:—Messrs. John Hartley Blackburn, Walter Blease, Eric Mackay Carter, John Gane, John George Griffiths, Charles Fitch Kemp, Adam Murray,

George Sneath, and Thomas Wise. Whilst he was on his feet he wished to add a word of explanation to what had already fallen from the President as to the withdrawal of the resolution of which he had given notice. He recognised entirely the reasonableness of the representation from the Council, that before the matter was submitted to a public meeting the members of the Council itself should have an opportunity of considering the proposals that he intended to make. He might just intimate that his intention was to forward to the Council the paper that he read on the 19th April to the Liverpool Society, and also the remarks that he intended to make at this meeting in support of the motion, leaving the Council to accept the responsibility of considering those suggestions and acting upon them as they considered wise and when they considered proper. He had much pleasure, after that explanation, in proposing that the gentlemen whose names he had read be re-elected as members of the Council.

Mr. E. H. FLETCHER, F.C.A. (London), seconded the motion, which was unanimously agreed to.

Mr. W. E. VELLACOTT, F.C.A. (London), proposed the re-election of the auditors, Mr. Gérard van de Linde, F.C.A., and Mr. Edward Hobbs, F.C.A. He believed that these gentlemen had been auditors of the Institute from the very beginning—at any rate one of them had—and he was sure that they had always done their duty. He had, therefore, great pleasure in proposing their re-election.

Mr. AUGUSTUS EDWARDS, A.C.A. (London), seconded the motion, which was carried unanimously.

Mr. GÉRARD VAN DE LINDE, F.C.A. (London), thanked the members, on behalf of his co-auditor and himself, for the great honour they had again done them in re-electing them.

Mr. EDWIN WATERHOUSE, F.C.A. (London), said he wished, before the meeting broke up, to say something to those gentlemen who would probably not attend the meeting of the Benevolent Association which was to be held in a few minutes. At the outset, he wished to thank the President very much for the remarks he had made in his address with regard to the Association, and to thank him also on behalf of every member for his increased donation—an example which he (the speaker) hoped would be followed by a great many others. (Hear, hear.) He wished, however, to draw attention to the total inadequacy of the subscriptions to the Association, having regard to the large number of members of the Institute itself. The Secretary had prepared for him some statistics which showed the small amount of subscriptions which came from certain districts. The Institute had a membership of 3,324, according to the 1905 list. Out of that number only 505, including those which had come in as the result of the appeal made a few days ago, were members of the Association. It would be seen therefore that only about 15 per cent. of the members of the Institute subscribed to the Association. Looking at the matter from a

broad point of view one would certainly think that two-thirds at least of the members of the Institute should subscribe to the Association, which was of so much value to the Institute itself. (Hear, hear.) Analysing the list, it might be interesting to point out from what sources the revenue was derived. Out of the 1,440 members of the Institute in London 16 per cent. were subscribers to the Association, and they contributed £264 in annual subscriptions. Last year some £463 was spent upon cases in London. Birmingham had a like percentage; they subscribed £39, and £30 was spent there last year. Twenty-three per cent. of the Bristol members subscribed £23, and no case came from their district. Fifty-three per cent. of the Leicester members subscribed £24, and there was no call for assistance. Ten per cent. of the 165 members in Liverpool subscribed £15, and £52 was spent there. Six per cent. of the 347 members in Manchester subscribed £16, and £51 was spent on their account. Thirty-three per cent. of the Newcastle members subscribed £26, and £52 was spent on their account. Fourteen per cent. of the Nottingham members subscribed £7, and £52 was spent on their account. Twenty-one per cent. of the Sheffield members subscribed £25, and £52 was spent there. The other places collectively showed a percentage of 12 per cent.; they subscribed £94, and £71 was spent on their account. It would be seen that in some very large centres of membership the subscriptions were very low, and he would be very glad if the members residing in those neighbourhoods would kindly bear this in mind, and try to increase the subscriptions in their particular districts. It might be interesting to the members to know that as the result of the appeal which was sent out the other day they had received applications for 21 new annual governorships at three guineas, and that there were 46 more new annual subscribers. The result was that they would have an increased annual income from subscriptions, irrespective of what the President had kindly added, of £114 gs. od. Oddly enough the donations promised as the result of the appeal were exactly the same—£114 gs. od.

Mr. S. P. DERBYSHIRE, F.C.A. (Nottingham), moved that the best thanks of the meeting be given to the President for his conduct in the chair—a resolution which he felt sure would meet with the unanimous approval of the members. (Applause.) As a provincial member, he wished to express his gratitude and appreciation to the Institute for what they had done during the past year in making an allowance to provincial Students' Societies of £206 12s. 6d. The provincial members had sometimes felt in the past that they had not received that thought and consideration to which they considered they were entitled, but he submitted to the members scattered all over the provinces that it was largely their own fault. He appealed to the various members of the provincial Societies to do as

they had done in Nottingham—to make the Institute in London aware that there were provincial Societies, and that there were struggling provincials, smaller brethren, who could not come up to London and take the big business that was often taken by the head firms of London accountants. He wished to thank their friend from Johannesburg for having dealt so eloquently with the subject to which he had referred, and to express the hope that they would have similar visits in the future from members of the Institute who were scattered all over the globe. (Hear, hear.)

Mr. A. A. MOORE, F.C.A. (London), seconded the motion, which was passed unanimously.

The PRESIDENT tendered his best thanks for their appreciation of the small duties he had had to perform.

The proceedings then terminated.

## The Chartered Accountants' Benevolent Association.

The twentieth annual general meeting of this Association was held at the conclusion of the annual meeting of the Institute, the President (Mr. EDWIN WATERHOUSE, M.A., F.C.A.) in the chair.

The HON. SECRETARY (Hon. George Colville, B.A.) having read the notice convening the meeting,

The following were taken as read:—

### Report and Accounts.

1.—The Association on the 31st March 1906 consisted of 431 members, viz.:—

- The President,
- 31 Vice-Presidents,
- 12 Life Governors,
- 31 Annual Governors
- 47 Life Members,
- 309 Annual Members,

being a decrease of 17 during the year.

2.—The Board of Governors again have to express their regret that the membership of the Association does not increase in proportion with the number of the members of the Institute, only about one-tenth of the members being annual subscribers to the Association. During the year the amount of relief which was found to be required (£824 7s. 6d.) together with current expenses (£37 6s. 9d.) has exceeded the income arising from subscriptions and investments by a sum of £101 19s. 3d., and unless a considerable increase can be shown amongst the subscribers to the Fund it will be found imperative to make either an inroad on capital or a reduction in the relief granted.

3.—Acting under powers conferred on them at the last General Meeting, the Board of Governors have appointed an Executive Committee who, amongst other things, deal with the applications for assistance received. The Committee consists of Messrs. E. Layton Bennett, Charles Comins, Ernest Cooper, J. H. Duncan, F. L. Fisher, J. G. Griffiths, G. Walter Knox, J. Dix Lewis, Francis W. Pixley, W. Plender, G. Sneath, Gérard van de Linde, Edwin Waterhouse, T. A. Welton, and T. Wise.

4.—During the year ended 31st March 1906 the Executive Committee afforded relief in the following cases :—

Initials	Age	Qualification for Relief	Date of First Grant	Amount of Previous Relief Given	Short Details of Case	Amount paid during Financial Year	Manner in which Relief given
W.G. ....	60	Widow of Provincial Member.	1893	£ 301 10 0	Except for what assistance is received from her four step-children has no other means. In weak health.	26 10 0	At rate of 10/- per week.
H.A. ....	68	Widow of London Member.	1893	281 12 10	Left practically destitute. Deaf.	25 0 0	At rate of £25 a year, payable quarterly to date.
A.J.E. ...	54	Daughter of London Member.	1903	76 5 0	Unmarried and in reduced circumstances. Mother previously in receipt of relief.	40 0 0	At rate of £40 a year, payable quarterly.
E.W.E... ..	63	Widow of London Member.	1897	411 5 0	Left destitute; indifferent health. Entirely dependent on charity.	52 10 0	At rate of Fifty Guineas a year, payable quarterly.
E.H. ....	71	Widow of London Member.	1899	173 9 9	Lets apartments. Has a small allowance from her late husband's firm, otherwise without means.	30 0 0	At rate of £30 a year, payable quarterly.
B.H. ....	76	Formerly Provincial Member.	1900	151 0 0	In distress owing to age, ill-health, and inability to obtain sufficient business to support himself and family.	52 0 0	Payable at rate of £1 a week.
P.A. ....	57	Widow of Provincial Member.	1901	122 10 0	Left practically without means, and with invalid children to support. Has some assistance from other children.	30 0 0	At rate of £30 a year, payable quarterly.
S.F.T. ..	64	Provincial Member.	1901	133 7 6	Suffering from bad eyesight and other infirmities. Has lately been elected to an Almshouse with a pension of £40, and the grant is now discontinued.	13 2 6	At rate of Fifty Guineas a year, payable quarterly, until June 30th.
M.J.T. ..	62	Former Provincial Member.	1888	99 0 0	In distress owing to age, ill-health, and inability to obtain work.	13 0 0	Grant of £13, at the rate of 10/- a week for 6 months.
P.A.C. ..	42	Widow of London Member.	1901	163 1 2	Left with very insufficient means and a family of nine to support, (eldest 18).	52 10 0	At rate of Fifty Guineas a year, payable quarterly.
S.A. ....	60	Widow of London Member.	1902	125 0 0	Left with insufficient means, and in bad health. Died 1st Dec. 1905.	22 10 0	At rate of £30 a year, payable quarterly.
C.E. ....	80	Widow of London Member.	1903	75 0 0	Left totally unprovided for, and dependent on a daughter with whom she lives.	30 0 0	At rate of £30 a year, payable quarterly.
S.E. ....	59	Widow of Provincial Member.	1903	110 0 0	Left insufficiently provided for, and invalid son to support. Has been most unfortunate in her efforts to obtain a living.	35 0 0	At rate of £30 a year, together with a donation of £5.
C.O. ....	54	Former Provincial Member.	1903	50 0 0	Out of employment and with no means. Bad health.	12 0 0	Donations from time to time.
C.J.A. ..	53	Widow of London Member.	1903	60 0 0	Left without means, and unable to earn a living.	40 0 0	At rate of £40 a year, payable quarterly.
C.J.E. ..	46	Widow of London Member.	1903	35 0 0	Daughter-in-law of C.E., with three children. Lets apartments.	40 0 0	At rate of £40 a year, payable quarterly.
M.M. ..	60	Widow of London Member.	1903	30 0 0	Has invalid children, and is crippled with rheumatism. No means.	23 0 0	At rate of £20 a year, to 30th September 1905, and since at rate of £25, payable quarterly.
L.M. ....	38	Widow of London Member.	1903	65 12 6	Left with two young children. Has a pension of £20 a year from the Pewterers' Company.	52 10 0	At rate of Fifty Guineas a year, payable quarterly.
H.H.E... ..	66	Former Provincial Member.	1904	41 0 0	In reduced circumstances and bad state of health, with a wife to support.	39 0 0	At rate of 15/- a week.
Y.H. ....	71	Former Provincial Member.	1904	21 0 0	In distress owing to failing health and mental weakness.	52 0 0	At rate of £1 a week.
E.B.M. ..	32	Daughter of E.W.E.	1905	—	Just commenced small poultry farm in Canada.	25 0 0	At rate of £25 a year, payable half-yearly.
S.M.A. ...	45	Widow of London Member.	1905	—	Left practically without means and with two children. Lets apartments.	10 0 0	Donation.
R.M.A. ...	62	Widow of Provincial Member.	1905	—	Permanent invalid. Left with a son and daughter both dependent on her, the former being of weak intellect.	52 10 0	At rate of Fifty Guineas a year, payable half-yearly.
P.J. ....	80	Provincial Member.	1905	—	In reduced circumstances owing to age and state of health. Has step-daughter and niece partially dependent on him.	26 5 0	At rate of Fifty Guineas a year, payable quarterly.



S.A.B. ..	26	Daughter of a London Member.	1905	£ s d	To assist her in paying the funeral expenses of her mother and sister.	£ s d	In two donations of £10 each.
A.E.S. ..	52	Widow of Provincial Member.	1906	—	Left practically without means and with two children and her mother-in-law dependent upon her.	5 0 0	Donation.
P.H.M. ...	40	Widow of Provincial Member.	1906	—	Left without means. Earns a little by nursing.	5 0 0	At rate of 10/- a week.
						<u>£824 7 6</u>	

## SPECIAL FUND.

J.E. ....	71	Clerk to Chartered Accountants.	1893	£ s d	Unable to continue his occupation owing to age and bodily infirmities. Has no means.	£ s d	At rate of 10/- a week.
H.A.M. ...	54	Widow of a Clerk to Chartered Accountants.	1895	250 0 0	In very poor circumstances. Formerly tried to make a living by keeping a small shop. Has creeping paralysis.	26 0 0	At rate of 10/- a week.
						<u>£52 0 0</u>	

5.—The Honorary Auditors, Mr. E. Hobbs, F.C.A., and Mr. F. L. Fisher, F.C.A., retire, and are eligible for re-election.

audited, are annexed to this report.

EDWIN WATERHOUSE,

President.

6.—The accounts for the year ended 31st March 1906, duly

9th April 1906.

## THE CHARTERED ACCOUNTANTS' BENEVOLENT ASSOCIATION.

Dr.

Capital Account for the year ended 31st March 1906.

Cr.

To BALANCE carried forward .. .. .	£ s d	10,854 1 10	By BALANCE on 31st March 1905 .. .. .	£ s d	10,604 19 10
			By DONATIONS .. .. .		249 2 0
	<u>£10,854</u>	<u>1 10</u>		<u>£10,854</u>	<u>1 10</u>

Dr.

Income and Expenditure Account for the year ended 31st March 1906.

Cr.

To CURRENT EXPENSES:—	£ s d	£ s d	By SUBSCRIPTIONS:—	£ s d	£ s d	£ s d	£ s d
Printing and Stationery ..	24 11 8		32 Governors at	3 3 0		100 16 0	
Postage and Petty Expenses	12 15 1		3 Members ..	2 2 0	6 6 0		
		37 6 9	322 Members ..	1 1 0	338 2 0		
To RELIEF granted .. .. .		824 7 6			344 8 0		
			357			445 4 0	
			By INTEREST AND DIVIDENDS ON INVESTMENTS ..		313 19 3		
			By BANK INTEREST .. .. .		0 11 9		
			By DEFICIT for year (see Balance Sheet) ..		101 19 3		
	<u>£861 14 3</u>					<u>£861 14 3</u>	

Dr.

Special Fund Account for the year ended 31st March 1906.

Cr.

To RELIEF granted .. .. .	£ s d	52 0 0	By BALANCE on 31st March 1905 .. .. .	£ s d	76 4 4
To BALANCE, as per Balance Sheet .. .. .		84 14 4	By DONATIONS .. .. .		10 10 0
	<u>£86 14 4</u>			<u>£86 14 4</u>	

Dr.	Hanson Fund Account for the year ended 31st March 1906.										Cr.		
			£	s	d		£	s	d		£	s	d
To PAYMENTS to Beneficiaries ..			40	0	0	By BALANCE on 31st March 1905 .. ..	491	19	1				
To BALANCE on 31st March 1906, viz.:—						By INTEREST on Investment .. ..	14	1	2				
£350 London, Tilbury and													
Southend Railway 4% Deben-													
ture Stock at cost .. ..	450	18	4										
CASH in hands of Board of													
Governors .. ..	15	1	11										
							466	0	3				
							£506	0	3				
											£506	0	3

Dr.	Taylor Fund Account for the year ended 31st March 1906.					Cr.		
		£	s	d		£	s	d
TO PAYMENTS to Mrs. Taylor .. .. .	27	16	6		BY BALANCE on 31st March 1905 .. .. .	855	13	5
TO BALANCE on 31st March 1906, viz.:—					BY INTEREST on Investment .. .. .	27	16	6
£795 Brighton Corporation 3½% Debenture								
Stock at cost .. .. .	855	13	5					
		£888	9	11			£888	9 11

[illegible]

We have examined the above Accounts with the Books and Vouchers of the Association, and certify the same to be correct. We have ascertained that the securities are registered in the names of the Treasurers. The Bankers have certified the correctness of the Bank Balance.

*London, April 10th 1906.*

E. HOBBS, F.C.A.  
F. LINDSAY FISHER, F.C.A. } *Honorary Auditors.*

The PRESIDENT, in moving the adoption of the Report and Accounts, said he had very little to add to the few words which he had addressed to the members during the meeting of the Institute. There was one little fact, however, which he omitted to mention, and that was that even amongst the members of the Council there were some who were not members of the Association—at any rate, this was the case a short time ago. He hoped that every member of the Council would set an example to the members of the Institute by becoming members of the Association. (Applause.)

Mr. FREDERICK WHINNEY, F.C.A. (London), seconded the motion.

Mr. JENKINS, F.C.A. (Cardiff), said that a suggestion had been made that perhaps the amount of the fee necessary for Fellowship of the Institute was rather high, and that that might deter some of the Associates from becoming Fellows. It crossed his mind whether the same objection might not be raised to the subscription to the Benevolent Association. He would be very sorry to feel that anyone was debarred from joining the Association on account of the subscription. It was, of course, a very moderate one; still, they could easily imagine that in the case of a number of their young members who were struggling to get into a position it might be a matter for consideration whether, in addition to all the other fees and expenses which they had to pay, they could afford another guinea for the Benevolent Association, and, if young and active, flattering themselves that they were going to carry everything before them in the future, it might not appeal to them quite so strongly as it might to some others. He did not know whether the question had ever been raised, or thought of, whether they could have another scale of subscriptions for Associates of the Institute so as to encourage them to join the Association. They wanted to increase the income of the Association, and if they could possibly reduce the amount of the subscription of those who could not see their way to pay the full guinea it might be a source of additional income.

The PRESIDENT said they were always glad to receive any small amounts. In the present report it would be seen that there were donations of 5s. and 10s. 6d. The only drawback to such a small subscription was that it did not constitute membership.

Mr. THOMAS BOWDEN, F.C.A. (Newcastle), said he wished to emphasise what had already been said about the interest the members in the provinces had taken in the Association. He was very proud indeed to hear what the President had said about Newcastle. Certainly they had been eclipsed by Leicester, but he wished to say—not in a spirit of boastfulness—that he took some credit for the position of Newcastle. Two years ago he was approached to see if he could not do something personally in New-

castle, and he set to work. He appealed to the different members in the North, and hence the position that they were in to-day. If members in other parts of the provinces would take the same trouble he was quite sure that their membership would be very considerably increased. There were many members of the Institute who simply wanted the matter brought prominently before them, and by a personal appeal he was quite sure that they could increase the membership of the Association to a considerable extent. (Applause.)

Mr. DERBYSHIRE, F.C.A. (Nottingham), remarked that they had just attended a meeting of the Institute, where they had placed before them an Income and Expenditure Account showing that the Institute had a surplus of over £3,000 for the year, and that the Institute, as an Institute, having paid for that beautiful hall, was fast accumulating a large sum of money. Now they were present as the Chartered Accountants' Benevolent Association, where the position was just the opposite. The Income and Expenditure Account showed a deficit of £100, and if, as a comparatively new Association—it was only 26 years old—they had a deficit now, what were they likely to expect in years to come, when the claims upon the Association arising from increased membership must in the ordinary course of things be much larger than they were at the present time? The suggestion that he wished to throw out was that when any alterations were being made in the Bye-laws of the Institute—and surely they were not members of an Institute which could never have any change—power should be given to the Council to divert some of the surplus wealth of the Institute to the needs of that splendid Benevolent Association, whose claims had been so ably advocated that day. If he was in order in referring to the meeting of the Institute which had just been held, he saw no great reason why they should keep on piling up large funds. They had built a Hall in the 25 or 26 years of the Institute's existence, they had paid all the expenditure, they had accumulated a large capital, and while necessarily they were spending sums of money from time to time, he ventured to submit that ways and means could be found whereby the Institute out of its vast funds might be able to set aside a substantial sum of money towards the needs of the Benevolent Association.

The PRESIDENT said he thought Mr. Derbyshire's proposal was hardly a practicable one, because it was contrary to the Charter of the Institute—he thought it was contrary to the principles which had been adopted since the Institute was formed. It was better to leave the provision of funds to the charity of individuals rather than to a corporation like the Institute itself. Naturally, if the Institute subscribed, private charity from individuals would fall off.

Mr. FREDERICK WHINNEY said that the difficulty was that

the income from the invested funds and the present subscriptions did not cover the amounts given in charity, and therefore they wanted a larger income. It was suggested that even those who subscribed the capital should go on subscribing annually, say three guineas.

Mr. T. G. SHUTTLEWORTH, F.C.A. (Sheffield), said he could confirm what Mr. Bowden had said, that the only way to obtain subscriptions from those in the provinces was by appealing personally to the members of the local Societies. He had no doubt that further subscriptions could be obtained in that way. There was one clause in the appeal of the President which he could fully confirm—that was the great care with which the relief was distributed. (Hear, hear.) Those who contributed to the fund might feel assured that the money was well spent, and that there was no unnecessary expenditure. All the valuable work done in connection with the Association was honorary, and all the money contributed went for the purpose for which the Association was formed, and, not only that, but every care was taken to see that the money was properly applied. (Applause.)

The motion was then put and carried unanimously.

The Honorary Auditors (Mr. E. Hobbs, F.C.A., and Mr. F. L. Fisher, F.C.A.) were re-elected, on the motion of Mr. J. G. GRIFFITHS, F.C.A., seconded by Mr. GEORGE SNEATH, F.C.A.

Sir WALTER N. FISHER, F.C.A. (Birmingham), proposed a hearty vote of thanks to the President, not only for his able conduct in the chair, but also for the words he had spoken on behalf of the Benevolent Association. He hoped it would not go forth from this meeting that the Benevolent Association was at all likely to work its way through funds coming from the Institute. Such a suggestion, if carried out, would at once absolutely close the pockets of pure charity in helping the cause of pure mercy. He was quite sure that the more the members understood the real wants of the Association, the more it was brought before the various districts to show how absolutely necessary the Association was, the more funds would be forthcoming. Mr. Bowden had spoken with a great deal of pride about Newcastle, and he was sure they all congratulated Newcastle, and hoped that the subscriptions would continue to increase. Birmingham, he was glad to say, had done almost as well as Sheffield, but they must subscribe more. They would have done a great deal worse but for the effort made after the remarks of the President last year, when the local Society took the matter in hand, with the result that a very large increase of subscriptions and help came from that city. When the President's appeal went forth he hoped that the members themselves would see how absolutely necessary it was to meet the claims made upon the Association, and that those who did not

subscribe at present would do so liberally in the future. (Applause.)

Mr. G. W. KNOX, F.C.A. (London), in seconding the motion, said they ought to thank Mr. Waterhouse not only for acting as President, but for all the help he had given in connection with the work of the Association during the year. He (the speaker) knew that the work itself was its own reward, but that did not prevent them from thanking the President for the amount of care and pains which he took in connection with the operations of the Association.

The motion was cordially adopted.

The CHAIRMAN briefly acknowledged the vote, and stated that the thanks of the members were also due to the Executive Committee, by whom he was ably assisted, and on whom the business mainly devolved.

The proceedings then terminated.

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## The Institute of Chartered Accountants in England and Wales.

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### Recent Additions to the Library.

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#### *Purchased.*

Hatton's Merchant's Magazine. London: 1707.

"Unispect" System of Bookkeeping. By A. T. Hunter, C.A. 2nd Edition. Edinburgh: 1906.

Reports of Cases under the Companies Acts. Reported by W. B. Megone. 2 Vols., 1889-91.

Parliamentary Debates. Vols. 2 and 3 of 1906.

Times "Issues," July-December 1905.

Friendly Societies Return. Parts B and C of 1904.

Encyclopædia of Local Government Law. Vol. 2. London: 1906.

#### *Presented by the Authors.*

Amsdon's Complete System of Bookkeeping for Brewers, &c. By E. Amsdon, A.C.A. London: 1906.

Manual of Bookkeeping for Solicitors. By J. M. Woodman, F.C.A. Revised Edition. London: 1906.

Personal and Domestic Accounts. By J. G. P. Ibotson, A.C.A. London: 1906.

Patents to Inventors. By A. H. Stanley. London: 1906.

#### *Presented by Messrs. Foulks Lynch & Co.*

Handbook of Executorship Law, with the mode of keeping Executorship Accounts. By D. F. de l'Hoste Ranking, E. E. Spicer, A.C.A., and E. C. Pegler, A.C.A. London: 1906.

#### *Presented by the Secretary.*

Joint Transactions of Chartered Accountants' Societies, 1905.

## Union of Chartered Accountant Student Societies.

Dr.

INCOME AND EXPENDITURE ACCOUNT for the year ended December 31st 1905.

Cr.

	£	s	d		£	s	d
To Travelling of Representatives to Manchester and Liverpool .. .. .	28	9	7	By Levy on the Associated Student Societies at 6d. per Member:—			
Stationery and Printing .. .. .	0	11	7	Birmingham .. .. .	7	10	6
Engraving Plate and Stamping Prize Essay Books .. .. .	2	0	8	Bristol .. .. .	1	12	0
Postages, London .. .. .	1	9	8	Hull .. .. .	1	9	6
Expenses of Chairman of Committee .. .. .	2	1	0	Liverpool .. .. .	4	18	6
Expenses of Lecture Organising Secretary .. .. .	1	6	6	Leicester .. .. .	1	1	0
Copies of Reports of Meetings of Committee .. .. .	0	16	6	London .. .. .	20	16	6
Sundries .. .. .	0	1	10	Manchester .. .. .	8	18	0
	36	17	4	Nottingham .. .. .	1	5	0
Prizes for Autumn 1905 Essay Competition .. .. .	8	8	0	Northern .. .. .	1	18	6
	45	5	4	Sheffield .. .. .	2	17	6
Balance, carried down .. .. .	7	1	8				
	£52	7	0		£52	7	0

### BALANCE SHEET, December 31st 1905.

<i>Liabilities.</i>		£	s	d	<i>Assets.</i>		£	s	d
Amount Payable to Prize-winners for Autumn 1905 Essay Competition .. .. .		8	8	0	Cash at Bankers .. .. .		5	5	0
Printing of Balance Sheet for Joint Debates .. .. .		5	9	6	Levies—Sum due in respect thereof .. .. .		52	7	0
Clark, Battams, Lanham & Co. .. .. .		19	16	1	Joint Debates—Sum due from the Societies for copies of Balance Sheet .. .. .		6	14	9
Chairman of Committee and Lecture Organising Secretary for Sundry Expenses .. .. .		3	7	6					
Representatives for Travelling Expenses .. .. .		8	11	0					
Secretary for Travelling Expenses of Representatives, Stationery, &c. .. .. .		7	17	1					
		53	9	2					
Income and Expenditure Account:—									
Surplus from last account .. .. .	£3	15	11						
Do. for 1905 .. .. .	7	1	8						
		10	17	7					
		£64	6	9					

(Signed) ARTHUR F. DODD,  
*Chairman of Joint Committee.*

(Signed) G. H. REDFERN,  
*Honorary Secretary.*

I have examined the foregoing Balance Sheet and Income and Expenditure Account with the Books and Vouchers of the Joint Committee, and certify the same to be, in my opinion, correct.

COLLEGE HILL CHAMBERS, LONDON, E.C.  
9th April 1906.

(Signed) H. E. BARHAM, F.C.A.,  
*Hon. Auditor.*

## The Work of the Auditor.

By ROBERT H. MONTGOMERY, C.P.A.

FROM a lecture before the Evening School of Accounts and Finance, University of Pennsylvania.

Of all the work of the accountant, auditing is the most important. Many accountants are well qualified except for

the lack of the auditor's equipment. A man may have a good knowledge of higher bookkeeping or practical accounting, and yet not be qualified to conduct an audit; he may understand the theory of accounts without being able to adapt himself to the intricacies of auditing; he may have a knowledge of commercial law and business customs relating to accounts, and yet lack the aptitude of the auditor. A skilled auditor will not only have all of the qualifications enumerated, and be able to bring to bear on

any given problem all of the knowledge, but he must also have a broad education supplemented by experience.

The average accountant cannot make a success of an audit unless he understands all of its underlying principles. These principles can only be grasped by arduous study. A successful auditor is no more born than is a successful surgeon. The surgeon does not attempt a difficult operation until he has matriculated in a medical college; until he has attended clinics; until he has assisted his seniors, and until he has passed through all the other elementary stages of professional training. So the auditor must ground himself in the elements of his profession by study and by holding the tools for his seniors. After all, a set of books or a system of accounts is very much like a human being. We see a man apparently in the best of health, who nevertheless is suffering from some dangerous hidden disease, which an operation alone will reveal. Or he may be a physical wreck and be saved only by skilled attendance. In no case, however, does he want to be experimented upon. Similarly a business man wants skilled help for diseases of his accounting system, and he desires to employ none but thoroughly qualified auditors to examine the condition of his business.

In a narrow sense there are but three kinds of audits, viz. :—

(1) The examination which involves a mechanical checking of the books and records, the placing of red ink tick marks opposite certain figures in certain books, and the making of like tick marks opposite supposedly like figures in other books; and the verification of a mass of footings, vouchers, &c., which enables the auditor to say that the arithmetical work is perfect.

(2) The examination which consists of a mere inspection of results, involving, as it may be, the analysis of certain accounts, but on unscientific lines.

(3) An examination which combines three methods: first, the verification and testing of enough clerical work to insure its accuracy, having always in mind the co-ordination of the accounts, the actual rather than the physical relation of one book to the other; second, a careful analysis of the accounts, a searching inquiry into the entire organisation under investigation by a careful search for errors of principle as well as technical errors and evidences of fraud; and, third, an intelligent study of the Balance Sheet.

Much harm has been done through the practice of making audits of the class first mentioned. A good business man with no knowledge of bookkeeping can make a better audit than a so-called auditor who does not understand how to make an audit. A business man can tell very

soon whether an audit is worth while, and if it is not conducted intelligently he does not want a second one. The third form of audit is the only one which will commend the accountant to an intelligent client.

The underlying principles of auditing are theoretical, and are not subject to change to fit particular businesses or special systems of account.

These underlying principles are few in number and can be applied indefinitely. Let us examine them :—

(1) The auditor must ascertain that all of the assets shown by the books to be on hand at a certain date are or were actually on hand.

(2) He must ascertain whether any other assets not on the books should be or have been on hand.

(3) He must ascertain that the liabilities shown by the books to be owing at a certain date are or were actual liabilities.

(4) He must ascertain whether or not all liabilities are in fact shown by the books.

(5) He must ascertain whether or not liabilities so shown have been properly incurred.

(6) He must ascertain whether the earnings shown by the books are properly accounted for, and whether any of the earnings are omitted therefrom.

(7) He must ascertain whether or not the expenses and losses have been properly stated and supported.

Are these principles sufficient in given cases?

#### *Single-Entry Books.*

No modification of the above rules is necessary. If the assets and liabilities are not properly set up, the auditor can build up his own Balance Sheet and proceeds as if the items were on the books.

The application of all of the above rules will, I believe, result in a proper audit of any undertaking. In commencing an audit secure a Balance Sheet, if one has been drawn up, together with the trial balance before closing. A careful survey of all the accounts shown thereon will suggest the proper procedure. After a little experience the auditor will be able to recognise every caption on the trial balance, except that sometimes a "yellow dog" account is called "Hanover Bank," or some other misleading title. A glance at some of the entries is usually enough, however, to set one straight.

*Verification of Assets,* Google

An untrained auditor should inspect physically all assets,

otherwise he may be deceived; but an auditor with the requisite training and experience will find that many assets are susceptible of actual verification without the physical scrutiny otherwise required. Bank balances, for instance, may be proved without visiting the bank and requiring them to show your clients' money, even if banks earmarked all funds in their possession. A bank Pass Book indicating a balance in excess of that called for the Cash Book is, however, by no means conclusive. Bank Pass Books are easily duplicated and forged. Outstanding cheques may more than exhaust the nominal balance shown by the bank—more than wiping out the balance claimed. The procedure in these two instances is plain: The auditor should himself secure the Pass Book from the bank or ask for a direct confirmation, even if it were balanced the day before the audit, and as audits are usually made at a later date than that of the Balance Sheet, an inspection of the cheques received subsequently will probably disclose any discrepancy in the list of outstandings at the time of the Balance Sheet. It is hardly necessary to state that the only currency which should appear in the cash drawer is that issued by the United States Government. Sundry notes of hand issued by the cashier himself, or other employees, are no longer regarded as quite so good as gold coin of the present weight and fineness.

#### *Bills Receivable, Stocks, Bonds, &c.*

After the verification of the cash, which is the most "liquid" asset, and is, therefore, more liable to change and requires immediate attention, will come the examination of promissory notes, stocks, bonds, &c. Without going into details it is sufficient to say that no one should attempt to pass on the adequacy of securities, unless thoroughly acquainted with the general laws and customs regarding them. This equipment includes a knowledge of commercial paper; familiarity with corporate stocks and bonds of various kinds; enough knowledge of law to distinguish between a third mortgage and a ground rent; and, above all, enough common sense and everyday knowledge of the market to be able to detect false values placed upon beautifully printed certificates and bonds. It is quite true that the securities of many sound enterprises are not quoted daily, but as a rule they speak for themselves, and securities concerning which a trained auditor finds himself unable to secure any independent valuation should not be left to the handling of an officer who is anxious to show a profit. If the cost of this entire class of assets is not shown clearly by the books, the auditor should be careful in accepting the estimates of officers as to their value. In this connection it should be noted that all overdue or protested notes should be transferred immediately to the Personal Account of the debtor. The Bills Receivable Account in the Ledger is for live notes not due,

and its use as a morgue must be condemned by every auditor. Accounts receivable can, as a rule, be valued without difficulty. If the business has been long established, past results can be profitably used, and from these results an allowance for bad and doubtful debts can be ascertained. The accountant should be as generous as possible in this reserve. Of course, all recent accounts are good. But were not all bad debts at one time "recent"?

#### *Stocks on Hand.*

As an auditor acting in his professional capacity is not an appraiser, he is not held responsible for the value nor quantity of the stock of merchandise, materials, or product which is shown by the Balance Sheet, unless, of course, he chooses to accept responsibility. In practically every audit of a commercial undertaking the audit is commenced after the date of the Balance Sheet. If the auditor ascertains that the stock has been taken by competent persons; certified to by responsible officials; the extensions and footings verified by himself or his assistants; numerous items critically examined to see that the stock is priced at cost or the market, whichever is the lower; that a careful analysis of the Profit and Loss Account does not reveal any marked discrepancy between the inventory in question and that of former years, unless readily explained—he may feel reasonably safe in accepting it. In all cases, however, his certificate should set forth how far his verification has extended.

The inventory should be examined first if there are collateral indications that the business had been profitable, even though the books show a loss. Inventories are frequently taken hurriedly, materials in transit are often omitted, or included when the bills therefor have not been entered. An inventory at the beginning of a period might be overvalued, and at the end undervalued, and numerous other causes of errors might be cited which, if not detected, would result in misleading statements of profit and loss. An auditor will find the inventories one of the most fruitful sources of error. Here also an auditor will have to use good judgment in passing values, for each increase or decrease in an inventory affects the Profit and Loss Account to correspond. It is almost as harmful to pass undervalues as overvalues where the result of the audit may be improperly used. The most flagrant cases, however, concern overvaluations, with which an auditor must deal without fear or favour.

#### *Plant, Machinery, Real Estate, &c.*

If possible ascertain the exact book costs of these assets, and apply proper rates of depreciation. This answer, though short, is sufficient. Its ramifications, however, cause the auditor more trouble than all the other asset and liability items on the Balance Sheet combined. An

auditor whose work covers perhaps one year only must accept the responsibility of the whole previous history of the undertaking, so far as capital assets are concerned, unless he specifically disclaims it, and, even then, stockholders will probably hold him liable if mistakes are made. This brings up the question of the auditor's relation to the work of a predecessor. If the predecessor is a reliable accountant, his Balance Sheet should, of course, be accepted, but this contingency does not often arise. Most reliable auditors retain their clients, so that the work of a preceding auditor will usually bear as careful scrutiny as that of the bookkeeper.

If an appraisal indicates a greater valuation of capital assets than the books disclose, due perhaps to excessive depreciation charges, it may be good accounting to increase the book valuations and correspondingly increase the surplus. The surplus so raised, however, should not be used for dividend purposes, and in view of the fact that an appraisal may affect values at a time when materials of all description happen to be far above actual cost it is rarely advisable to disturb the book valuations, unless to reduce them where found excessive. Even then, if at cost and properly depreciated, the present apparent value should not govern. Revaluations are valuable to adjust insurance schedules, &c., but are not so scientific from an accounting standpoint as cost and depreciation. In rare cases, where accounts are kept too conservatively, items properly chargeable to plant have been charged to maintenance. An appraisal should not, however, be required to discover such a condition. A proper audit will be sufficient. It is frequently no easy matter to distinguish between additions to plants and renewals, but the auditor can usually rely on the statement of an engineer or superintendent, unless, of course, there is ground for suspicion of fraud.

Renewals must not be classed with revaluations, although they have some points in common. For instance, if an engine costing \$15,000.00 has 50 per cent. or more greater efficiency than a \$10,000.00 machine which it replaces, there should be an increase in the Machinery Account of \$5,000.00. If proper depreciation has been provided there would have been a sufficient sum set aside, plus scrap value, to contribute \$10,000.00 of the \$15,000.00 required. If, for instance, depreciation were only \$3,000.00 and the old engine sold for \$1,200.00 net, there would have to be an immediate charge against profit and loss of \$5,800.00.

With respect to accrued interest, unexpired insurance, &c., a careful analysis of the nominal accounts will disclose all prepaid items, and a careful examination of the assets will show up accrued items. As these assets vary

from year to year, it is never safe to overlook them, and they should be placed on every Balance Sheet.

### *Liabilities.*

The audit of liabilities need not be discussed in detail. The principal point to be urged is that Rule 4 is the most difficult to cover of all those mentioned, and perhaps the most important. A reasonably careful audit of the facts and figures in the books will be sufficient to vouch the liabilities per the Balance Sheet, but it requires more than a careful audit to ascertain whether or not all liabilities are, as a matter of fact, in evidence. It requires intuition, almost, in certain cases to locate large bills payable or other debts, the existence of which has been hidden from the auditor. Sometimes these omissions are intentional and fraudulent, very often unintentional and due to carelessness, but in either case the auditor's duty is the same. His responsibility does not end with the books. He is not a machine to add up columns; he is supposed to have all the skill and experience which should always be expected of each member of a skilled profession. Therefore, if the "account payable" does not appear in the voucher record he must notice its absence. This caution also covers the auditing of items which do not usually appear until the closing of the books, such as Accrued Interest Payable, Unpaid Wages, or Commissions to Agents, &c.

In the case of contracts, if the full contract price has been entered as an earning, an ample reserve must be created to cover the liability existing to complete the contract. This reserve should also cover the profit (if any) on the unfinished portion, and if the end of the work is not in sight the reserve had better be the full unexpended part of the contract price without taking any credit whatever for profit in the current period.

### *Income and Expenses.*

The audit of income and expenses can be treated of here only in the most general manner. As a rule, the audit of earnings is more important than the audit of cash payments. Not that the audit of payments is not important, but the auditor who discovers a leak in earnings, due either to faulty methods or to fraud, is rendering far more valuable service to his client than one who spends practically all of his time on vouchers, footings, and postings, and whose entire report consists of twelve pages containing nothing else than a list of vouchers not submitted or not approved by three persons.

As a rule, a paid cheque, properly endorsed, is a very good voucher wherever the signing of cheques means anything. True, it does not state the purpose, but the competent auditor can usually read a purpose into a bank cheque. It may not be supported by original invoices



showing the successive records of receiving clerks, purchasing clerks, heads of departments, bookkeepers, et al, but, if a test indicates that all of these precautions are taken, then, as a rule, the chance of fraud or error in this branch of the work is greatly diminished, and too much time should not be spent upon it.

The auditor should not be too technical. If the Minute Book of a corporation whose stock is all owned by four or five persons does not indicate a meeting for several years, although the stockholders' Personal Accounts indicate that profits have been credited thereto, the auditor should not assure them that they are in a bad way. If the profits have been equitably credited, if the concern has actually earned these profits, and is solvent, and if the State has not been defrauded out of taxes, the accountant should not concern himself if the stockholders wish to continue as of yore. Since no Court would stop them, the auditor is not called upon to interfere.

Above all, the auditor's work should be of value to his client. The audit should be worth more than the amount of the auditor's fee. Take the case of the manufacturer who also owns horses, and where horse feed has been sold; not one such man in fifty cares whether or not his bookkeeper credits a sale of oats to the Stable Account or to the General Sales Account, but fifty out of fifty men have a reasonable cause for complaint against an auditor who would fail to discover that oats were being sold, and that stable expenses were increasing beyond reason, the latter being readily discovered by analysing the accounts and making up of a comparative statement; this discovery in turn uncovering the fraud.

In conclusion, the auditor should be practical. No accountant should attempt the work of a professional auditor unless he is able to take such a broad view of a Balance Sheet that he can see not only what it contains but what it should contain.

(*The Journal of Accountancy*, New York.)

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## Review.

### The Advance Date Book.

*From June 1906 to June 1908.*

The Lecture Agency, Lim., the Outer Temple, Strand,  
London, W.C. Price 1s.

This Date Book has been specially compiled for the use of ministers, lecturers, public speakers, musicians, entertainers, secretaries of societies, managers of public halls,

and others who are compelled to make engagements a long time in advance, and before the ordinary diaries for the following year are available. It contains space for every day to June 1908, and a table up to December 1912, showing on what date Easter and the other feast days and holidays fall, together with various other items of useful information. An insurance policy of £100 in case of death by railway accident for the twelve months ending June 30th 1907 is included. The Date Book is 6in. deep by 3in. wide and about ¼in. thick, and is bound in best French Morocco with rounded corners.

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## Personal.

MESSRS. WILLIAM HEPPARD & SON, Chartered Accountants, have removed to Imperial Chambers, Richmond Terrace, Blackburn.

MR. J. WOOD MASSEY, A.C.A., announces that he has joined Mr. J. F. REMINGTON, A.C.A., in partnership, and will practise with him at 50 Cherry Street, Birmingham, under the style of J. F. REMINGTON & MASSEY, Chartered Accountants.

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## Meetings for the ensuing Week.

Tuesday—INSTITUTE OF CHARTERED ACCOUNTANTS.—Examination Committee at 2 p.m.

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## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, April 27th, was 147, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 90; Deeds of Arrangement registered, 57. The respective numbers in the corresponding week of last year were: Bankruptcies, 41; Deeds of Arrangement, 35—total, 76; being an increase of 71. The total number of commercial failures recorded during the 17 weeks of the present year is 2,830; the total number recorded in the corresponding 17 weeks of last year was 3,108, showing a decrease of 278.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, April 27th, was 139. The number in the corresponding week of last year was 111, showing an increase of 28. The total number filed during the 17 weeks of the present year is 2,601; the total number filed in the corresponding 17 weeks of last year was 2,893, showing a decrease of 292.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, April 27th, amounted to £3,515,981, by way of addition to £2,970,119, previously issued by the same companies. The amount registered in the corresponding week of last year was £634,360 showing an increase of £2,881,621. The total amount registered during the 17 weeks of the present year was £28,452,533 (in addition to the issues in previous years by the same companies), as compared with £26,582,375 for the corresponding 17 weeks in 1905, showing an increase of £1,870,158.

## The Profession in Scotland.

### Will.

Mr. Gilchrist Gray Pattison, of Viewpark, Russell Place, Trinity, Edinburgh, formerly secretary of the City of Glasgow Insurance Company, and afterwards of the firm of Pattison & MacNair, C.A., Edinburgh, who died on 10th March last, aged 78 years, left personal estate in the United Kingdom valued at £24,207. Probate of his deed of trust disposition and settlement, dated 25th June 1904, has been granted to his son, Mr. Gilchrist Gray Pattison, W.S., Mr. Archibald Ritchie Gilchrist, of Hay Lodge, Trinity, Mr. John Sharp, secretary, Mr. N. G. Finlay, W.S., all of Edinburgh.

### Personal.

Messrs. Welsh, Walker & Macpherson, Chartered Accountants, of 33 Cathcart Street, Greenock, announce that they have assumed Mr. Thomas Ord Sinclair, C.A., as a partner. The firm-name will be continued as at present.

## Lines to His Majesty.

[*The Evening News* in a few crisp paragraphs about an African native king sums him up as follows:—

"Khama is strongly opposed to the typically African custom of polygamy. He has only one wife, an educated woman, to whom he was married six years ago. His ebony hue and negroid lips excepted, the king might easily pass in his customary European costume for a grizzled bank manager or *Chartered Accountant*."

We're sorry, king, to find your ways  
Are cast in such a hopeless maze  
Of grizzled bankers, F.C.A.'s—  
Ab uno disce omnes!

You might, indeed, have walked apart,  
A sable greatness in your heart—  
A model for a Sargent's art,  
A Gainsborough's or Romney's.

Deep in your soul the slur will sink,  
Still tottering on the dreaded brink,  
'Twas cruel thus to make you drink  
A cup so sorely tainted.  
But with obeisance to your lot,  
In sympathetic phrase— Eh, what?  
We *really* hope that you are not  
So black as you are painted.

CASELL'S MAGAZINE for May 1906 contains: "J. S. Sargent, R.A.," by Charles T. Bateman, illustrated; "The Stockings," a complete story, by Percy White; "Benita," Chaps. XXI.-end, by H. Rider Haggard, with illustrations by Gordon Browne, R.I.; "England's Loss and Gain"; "My Lady's Gallery"; "The Gates of the Temple," a complete story, by Muriel Hine; "The Play of the Hand at Bridge"; "Lady Lucy's Masquerade"; "The Personnel of Parliament"; "An Enterprising Yankee," a complete story, by Fox Russell; "Work and Play in Mid-Atlantic"; "The Adventure of Godfrey Hallett and the French Prisoner of War"; "Other People's Humour"; "Men and Things;" &c.

THE CORNHILL MAGAZINE for May contains the customary instalments of "Sir John Constantine," by Mr. A. T. Quiller-Couch, and of "Chippings," by Mr. Stanley J. Weyman. Mr. Thomas Hardy contributes a lyric entitled "The Spring Call." In "A Talk with my Father" Mr. Walter Frith puts into crisp dialogue form many of the artistic reminiscences of the famous painter of "The Derby Day." "The Simplon Pass and the Great Tunnel," by Mr. Francis Fox, is a topical description of the work in view of its approaching inauguration. "A French Traveller in Charles II.'s England" is a study by Mr. D. K. Broster, based on an unpublished MS. which was brought to his notice by Professor Firth. In "The New Chemistry, IV.," Mr. W. A. Shenstone, F.R.S., writes on Carbon and the Shapes of Atoms. Mr. Claude E. Benson's "Venomous Serpents" is a brightly-written chapter on natural history, while Mr. D. G. Hogarth's description of "Chimaera and Phaselis" is inspired by a visit to Lycia.

MR. JUSTICE DARLING explained to a witness, recently, what counsel usually considered "a good verdict." Counsel was cross-examining the plaintiff in an action for alleged false imprisonment. He had previously defended the man, and got him acquitted on a charge of felony, and now asked him if he considered it "a good verdict." As the witness did not understand, his Lordship told him, amid much laughter, that what lawyers meant as "a good verdict" was a verdict against the weight of evidence.

HOW FORTUNES ARE EARNED.—Fortunes which sometimes look excessive may be the result of rendering great services to the community. If a man by intense mental application or natural aptitude can introduce economies into railroad management, he is worthy of a large salary. The salary would not in any case absorb the entire saving made to the stockholders of the railroad and to the public by the reforms introduced. In some cases this claim of the inventor is compensated by the royalties paid under the patent law, but there are many services rendered in the matter of organisation which are not patentable, but afford as striking benefits as patents. From such services have come many of our great fortunes. If their possessors receive what amounts to a commission on the services they render, it is only a small part of the sum of benefits they have conferred on the community. Take away the opportunity for winning either money or distinction by rendering such services, and few men, as human nature is constituted, would render them. It is right that competition between men should be brought within constantly narrower and narrower rules of justice. This is possible without taking away the initiative which makes men do things, and seems to me the direction in which, in spite of obstacles, humanity is tending.—*New York Independent.*

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### Bank Rate of Discount.

April 14th 1904 .. .. .	3½%
" 21st " .. .. .	3%
March 9th 1905 .. .. .	2½%
Sept. 7th " .. .. .	3%
" 28th " .. .. .	4%
April 5th 1906 .. .. .	3½%
May 4th " .. .. .	4%

## The Chartered Accountants' Benevolent Association.

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E. WATERHOUSE, Esq.

### Treasurers :

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F. W. PIXLEY, Esq.

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### Leading Articles.

#### The Annual Meeting of the Institute.

THE address of the President (Mr. JOHN GANE, F.C.A.), delivered at the Twenty-fifth Annual Meeting of the Institute, raised incidentally one or two points which call for further mention.

In spite of all that can be said in favour of the view that a 999 years' lease is, for all practical purposes, equivalent to a freehold, the announcement that the freeholders are contemplating a sale of their property will have been received with interest; and although, of course, it would be absurd to pay a fancy price, we think the statement that the freehold had been acquired would be welcomed.

With respect to the reference to the Joint Committee of the Chartered Societies and Mr. WHITE's withdrawn motion in regard to registration of accountants, it is satisfactory to

### The Accountant.

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learn that the question is receiving the serious consideration of the Council.

The lesson of the past has undoubtedly been that nothing can be accomplished by the independent action of the various societies of professional accountants, and the wisdom, therefore, of making one more serious attempt at unanimity cannot be gainsaid. Although nothing has been announced with regard to the matter, and although, of course, we do not speak with any inside knowledge, we cannot lose sight of the words let fall by the President to the effect that if the Society of Accountants and Auditors would agree not to oppose the Chartered Societies' Bill, the Institute for its part would be willing to help it in the direction of legislation to protect its own title against others. The suggestion strikes us as being eminently fair, and we feel not without hope that some broad and comprehensive scheme formulated upon these lines may be carried through at a comparatively early date.

The President made the usual appeal to Associates who were eligible to take up their Fellowship; and it may perhaps be assumed that the views of those who have not become Fellows were voiced by Mr. C. P. CROOKENDEN, F.C.A., who suggested that a further entrance fee of ten guineas and an advance of the annual subscription to five guineas was rather a high tax in view of the present financial position of the Institute. There may be something in the view that with an income exceeding its expenditure by some three thousand pounds per annum members' subscriptions are unnecessarily high, but that, it seems to us, affords but little argument in favour of the income derived from subscriptions being unequally levied among members, and we imagine that only quite a

minority of Associates of more than five years' standing would care to seriously suggest that their failure to take up full membership was owing to a lack of means.

On the subject of the discussion which arose in connection with the Transvaal Accountants' Ordinance, 1904, little need be said, except perhaps that the letter which appeared in our issue of the 7th October last, over the signature "X.," did not, of course, represent any more than it purported to represent, and was merely a statement of the views of the individual writer. In a footnote which appeared at the time we said the writer should have given some proofs as to his statements; and in the absence of any further contribution upon the subject we thought the matter was dead and buried. If, however, it should have given rise to any ill-feeling among our Transvaal subscribers we can only express our regret, coupled with our surprise that they should not have taken the opportunity afforded by these columns of placing their view of the matter before our readers generally. As we have very frequently stated, our columns are open to all responsible persons for the expression of individual opinions upon all subjects of general interest, but under no circumstances must it be supposed that, even in cases where we do not ourselves make any statement with regard to the matter, we necessarily endorse the views expressed by our correspondents.

The announcement that Mr. J. S. HARMOOD-BANNER, F.C.A., M.P., is, among others, responsible for the introduction of a Bill to provide for the audit of the Capital Accounts of certain Trusts will have been noted with considerable interest. We hope to be able to place a copy of this Bill before our readers at an early date.

On the subject of Chartered Accountants accepting the position of auditor of a company which has been rendered vacant owing to the caprice of shareholders, the President's statement that no rule of etiquette exists might well be construed as implying that the view of the Council and of members generally was that there was nothing improper in Chartered Accountants thus facilitating the unfair treatment of their professional brethren by unthinking or unscrupulous directors and shareholders. We do not think such an impression was intended to be conveyed by the President, or he would not have added that these considerations show the great necessity which exists for a statutory provision as to notice.

We are glad to note the President's comments upon the subject of the names of certain members of the Institute being inserted in a large type in the Post Office and Telephone Directories. Such insertions, whether paid for or not, are somewhat in the nature of an attempt at advertising, but we may state that the mere test of payment for an insertion in a directory is quite inadequate in itself. For example, if a young Chartered Accountant who is commencing practice were to share an office with another, or say with a solicitor, it would be necessary for him to make a small payment in order to secure the insertion of his name in the directory at all. Such payment, however, for obvious reasons could not be regarded as such an attempt at advertising as to be unprofessional.

At the conclusion of the General Meeting the Twentieth Annual General Meeting of the Chartered Accountants' Benevolent Association was held, under the presidency of Mr. EDWIN WATERHOUSE, M.A., F.C.A. The accounts

then submitted showed a deficit of £101 19s. 3d. on Revenue Account, thus emphasising the need for further annual subscriptions. We are glad to notice that some promises have already been forthcoming, but there is ample room for further help in this excellent work, and we trust that those who a few years since urged that it would be quite time enough for them to come forward when the expenditure exceeded the income will now observe that that time has arrived.

---

#### Gas Companies and Depreciation.

---

AS our correspondent "Spectator" states in a letter, which we reproduced last week, this interesting subject has not been by any means exhausted by the discussions that have recently taken place in these columns, and he himself raises a new point which gives the matter an increasing importance. We trust, therefore, that some of our readers who have special experience of the actual practice of these companies will follow the matter up and let us have the benefit of their views.

Our correspondent's statement is that a certain number of gas companies do actually provide for Depreciation, in addition to the indirect provision made by means of the statutory Reserved Fund, by from time to time capitalising less than might have been capitalised as the actual cost of extensions and improvements in the equipment of the undertaking. Where these extensions are undertaken simultaneously with the demolition of old works there must, of course, in all cases be an apportionment as between Capital and Revenue; and inasmuch as no hard and fast rule can be laid down as being properly applicable to all conceivable sets of circumstances,

it is clear that the allocation of expenditure as between Capital and Revenue gives the directors of these companies an opportunity of favouring Capital at the expense of Revenue, or *vice versâ*. It was, no doubt, with the object of avoiding this that the Legislature provided for a Government audit of the accounts of electric lighting companies and of certain water companies, which, nevertheless, in the proper sense of the term is no audit at all, but is an inquiry conducted by independent experts with a view to guarding against a financial policy which might be unfair to consumers. No such safeguard is provided by the Legislature in connection with gas companies generally, and we do not recall any instance in which an official audit is provided for under any special Act of Parliament; but there are, of course, certain provisions as to the publication of Balance Sheets which, however ineffective they may be, were doubtless intended for the same purpose.

It is obvious, however, that no amount of inspection of published accounts, more especially when conducted by non-experts, will disclose more than those who have prepared these accounts are desirous of making known, and, in consequence, it is always possible for the directors of a company to pile up Secret Reserves without any suspicion of the fact becoming known, at all events until those reserves have reached considerable proportions. Under this heading of Secret Reserves we certainly do not include a reserve for the equalisation of repairs, which is simply a book-keeping entry designed to obviate an incorrectness of a purely cash basis as applied to the accounts of a business undertaking. It is clear, however, whether gas experts may be agreed upon the point or not, that a provision of

4d. per thousand feet, or any other definite sum, cannot in the nature of things represent the average expenditure upon repairs and renewals to works and plant at *every* gas works. The conditions must of necessity vary far too much to make any uniform rate even approximately accurate. A comparison of the balance brought forward on the Reserve Account over a series of years would doubtless enable an accountant to test whether the Reserve was insufficient, adequate, or excessive, but if the balance is not shown as a separate item in the published accounts, no one except those who have access to the books can be in a position to form any useful opinion with regard to the matter.

Our correspondent suggests that, as it is unlikely that directors and shareholders would prefer to go on piling up enormous Secret Reserves, which could be of no pecuniary benefit to themselves except in the improbable event of the company being wound up, rather than share with consumers an immediate pecuniary benefit through the operation of the sliding scale, there is no reason why directors and shareholders should not be trusted to do what is fair to consumers. In the great majority of cases this assumption would, no doubt, be well founded, but that hardly seems to us to be a sufficient ground for relying exclusively upon the efficacy of the sliding scale and allowing the other safeguards provided by the Legislature in the interests of consumers to fall into disuse. The Legislature has decreed a maximum figure for the statutory Reserved Fund, and whether or not that maximum affords sufficient provision for the equalisation of the cost of renewals over a series of years, there can, it seems to us, be little doubt that it was intended for that purpose, and that

it is contrary to the spirit, as well as to the letter, of the Act, that there should be other and undisclosed Reserves in existence as well. When the statutory maximum has been reached, we understand that all surplus profits must be applied in part towards the reduction of the price of gas. The operation of the sliding scale ought not to be delayed because directors and shareholders consider the statutory Reserve insufficient, nor, it seems to us, can the fact that an increase of dividend would be simultaneously postponed be in all cases regarded as a satisfactory safeguard from the consumer's point of view. We are quite willing to agree that the provisions of the Act of 1871 are unscientific—confusing as they do a necessary Reserve for Depreciation with a Reserve Fund—but we do not think that is, of itself, sufficient justification for a failure to carry out what, it seems to us, are the clear provisions of the Act.

As we have before stated, it would, we think, be of considerable interest if any of our readers can give us definite information as to what course is pursued by gas companies with regard to the matter. In the meanwhile, however, it is of interest to note that, according to the *Municipal Journal* of the 27th ult., the Brighton and Hove General Gas Company makes no direct charge for Depreciation save in the case of fittings and stoves lent on hire, the cost of which is written down by  $17\frac{1}{2}$  per cent. per annum. Our contemporary is pleased to be facetious at this discovery, and appears, with its characteristic haste, to have lost sight of the legal aspects of the matter. If the Brighton Gas Company is distributing all its profits without adequately keeping up its statutory Reserved Fund, there may indeed be ground for criticising the wisdom of its financial policy,

but had there been no adequate Reserved Fund it seems only reasonable to assume that our contemporary would have drawn attention to the matter. As an instance of the extraordinary confusion of mind that frequently arises in connection with such subjects, particularly when discussed by those connected with local authorities, we quote the following words, which are attributed by our contemporary to the Brighton Borough Accountant:—"It is certain that if the Brighton and Hove Gas Company were placed under an obligation to write off the difference between the present day value of their capital assets and the total capital expenditure to date, they would be called upon to face a very heavy liability." We should be most interested if our contemporary, or anyone else, can explain to us what connection exists between the writing down of assets to their present day (or any other) value, and the being called upon to face a liability, heavy or otherwise. The liability that will have to be eventually faced is the liability to renew assets as and when such renewal becomes necessary; and the liability will accrue in its own due time, no matter what figure may in the meanwhile be placed upon the capital assets in the books of account.

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### Weekly Notes.

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#### Railways and Advertising Agents.

The appointment by the North-Eastern Railway of a commercial agent inaugurates a new era in British railway policy, and is the natural outcome doubtless of American experience, where the press agent is quite a valued officer. The idea is to exploit the natural resources and facilities of the area served by the company—in other words, to push the North-Eastern Railway to the front. Much good will doubtless be done by successful co-operation with industrial and agricultural interests, and if worked on a broad and intelligent basis the



scheme will certainly warrant its adoption. Anything that serves to show a real awakening on the part of railway managers in this country is sure of a hearty welcome.

**The Audit of Trust Accounts.** From the memorandum attached to the "Trust Accounts (Audit) Bill," presented to Parliament by Mr. Eugene Wason, we gather that the system of "compulsory audit" of the Capital Accounts of trusts is merely intended to provide for a periodical production of the securities representing the fund, with a statement as to the names in which they stand and the place where they are deposited. The auditor may be appointed by the trustees, or, failing them, by the beneficiaries or the Court, and must be either a member of the Institute of Chartered Accountants or of the Society of Accountants and Auditors, or the manager of a bank. The trustees are required to keep a Capital Account showing the condition and mode of investment of the trust estate, and any dealings therewith from time to time, while at the annual audit they must produce to the auditor all securities, stock certificates, bonds, and other instruments of title, and all books and accounts. We do not quite understand how this is to be enforced without compulsory registration of a copy of the accounts bearing the auditor's certificate, and in regard to the suggestion that auditors may be appointed from the ranks of bank managers, with all due respect to an estimable body of men, we think the post of auditor ought to be confined to professional accountants.

**Reconstructions.** A correspondent of *The Financial Times*, in the course of a long letter to that journal anent Mr. G. A. Touch's lecture on "The Science of Reconstructions," which has already appeared in these columns, points out that while a dissentient cannot be forced to take up shares in a new company involving "payment of an uncalled liability" a good deal of compulsion can be brought to bear by the "take it or leave it" doctrine. He also asks why the rights of a dissentient under a reconstruction scheme in voluntary liquidation should not attach in the case of the sale of an undertaking by the directors under the terms of a resolution. It is said that to go into the market with shares which may be receiving attention at the hands of certain groups and take what the market offers is a very different matter from receiving the value of the interest as arrived at by arbitration. The Klerksdorp Gold and Diamond Company (1904),

Lim., is instanced, and it will be interesting to note Mr. Touch's reply in due course.

**Railway Rating.** The decision of Mr. Walter C. Ryde—to whom the appeal of the Lancashire and Yorkshire Railway against the assessment of their goods stations at Salford and Pendleton had been referred as umpire—will, it is said, unless the same is upset on appeal, have the effect of revolutionising railway rating. It is reported that its result will be an immediate decrease in the rates paid by the railway companies on their Goods Yards of at least £250,000 per annum. It will be remembered that previously, in addition to the rates on the profits made by running lines, railway companies have paid rates on the value of the land on which sidings have been made, and the structural value of the sidings. This the umpire now decides to be wrong in law, and that the railway companies ought to be free from special rating on sidings, so that they will in future be liable only for rating on running lines.

**Bankruptcy Law Amendment.** From a newspaper report we gather that a number of representatives of the grocery, provision, and allied trades, met at the Grand Hotel, Birmingham, last week to consider the advisability of making known their views of the defects of bankruptcy law to the Committee which has been appointed by the Board of Trade to inquire into the subject. We understand that an address upon the defects existing in bankruptcy law was delivered by Mr. Durie Kerr, who is called "the trade accountant." Among other expressions of opinion made at the meeting we quote the following:—

"It was a most unfortunate thing that the grocery, provision, and allied trades topped the list of bankruptcies, and this was partly attributable to the fact that credit was very cheap."

"The magnitude of the Board of Trade scale of charges was a terrible evil, and bore very hardly on creditors in cases where the assets were small."

Reference was also made to the gross abuse of the Married Woman's Property Act, and ultimately a Committee was arranged to receive and consider suggestions as to amendments of the law, and to authorise a person to attend before the Departmental Committee to give expression to the views of local traders. Perhaps some of our Birmingham readers will be able to explain the meaning of the phrase "the trade accountant," for at present it seems rather difficult to comprehend.

**Mining Statistics.** According to a Blue Book just issued, the number of persons engaged in mining and quarrying at home and abroad in 1904 was close upon five millions. As no statistics are published by several countries—for example, Brazil, China, Persia, and Turkey—and for the ore mines and quarries of the United States, the figures quite probably fall very far short of the real total. It is interesting to note that more than half of the number stated were employed in obtaining coal; Great Britain employed over 833,000, the United States 597,000, Germany 543,000, France 171,000, Belgium 138,000, Austria 119,000, and India nearly 93,000.

**Licensing Compensation and Debenture-holders' Security.** The case of *The Law Guarantee and Trust Society v. Mitcham and Cheam Brewery Co.* deals with the question of the distribution and destination of compensation payable under the Licensing Act, 1904, the question being as to whether the compensation was payable to the trustees for the holders of the debenture stock of the company or to the company itself. Mr. Justice Kekewich decided that the former, being mortgagees, were entitled to receive the money, but not to use it since their right had not so accrued, and that the company, though they were not entitled to receive the money, were entitled to the use of it. The amount paid as compensation will therefore presumably be invested and the interest paid to the company. As has been pointed out, this may be satisfactory from a legal point of view, but as regards practice it seems rather unwise that this course should have been adopted, as doubtless the money could be dealt with to much better advantage than by investing it at a low rate of interest.

**Death of the Inspector-General in Bankruptcy.** We regret to record the death of Mr. Edwin Hough, late Inspector-General in Bankruptcy, which took place on the 30th ult., under somewhat tragic circumstances. For some little time past the deceased gentleman—who was fifty-six years of age—had been ailing mentally, and he had not attended to his official duties since December last. He returned from a visit to the Isle of Wight some three weeks since, and, according to the evidence produced at the inquest held on the 3rd inst., acting apparently on the impulse of the moment, he threw himself out of a window in the upper storey of his residence at Hampstead on the

29th ult., succumbing to his injuries on the following day without having regained consciousness. The jury returned a verdict of suicide whilst of unsound mind.

**Articled Clerks.** At the recent general meeting of the Law Society a member inquired whether the Council was of opinion that Section 4 of the Solicitors Act, 1843, ought to be amended so that no solicitor should have more than one articled clerk at one and the same time bound by articles of clerkship to serve him; and, further, that no solicitor should be competent to grant such articles of clerkship unless and until he had taken out six annual certificates. In reply, the President stated that while there might be differences of opinion with regard to the matter, there did not seem to be any particular reason why under certain circumstances a solicitor should be restricted to one articled clerk. Doubtless there were cases in which it would not be desirable that articles should be entered into with a man who had only recently been admitted, but bearing in mind that such men often became partners in firms of long standing he thought it would be unreasonable to make any definite rule with regard to the matter. It seems to us that the position of affairs with regard to Chartered Accountants lies upon very much the same lines. Younger members would probably complain if the privilege of accepting articled pupils were restricted to those who had been upwards of six years in practice. It occurs to us, however, that matters would upon the whole be placed upon a more satisfactory footing if Associates in practice were limited to one articled pupil, and Fellows allowed to still retain their privilege of taking two such pupils. Incidentally a revision of the rule upon these lines might have the effect of encouraging some of the 500 or so Associates who are now eligible for Fellowship to take up their full membership.

**A Point in Company Winding-up.** In *The African Farms, Lim.*, which came before the Courts a short time since, it was held that although as a general rule the statutory affidavit verifying a petition for the winding-up of a company by the Court should be made by the petitioner in person, this rule is directory, and not imperative, and that in a case where the petitioner is abroad, and the petition is lodged by his power of attorney acting within his powers, it is sufficient if the petition is verified by the attorney's

affidavit. This, of course, is in accordance with one of the primary rules of evidence—not to admit any but the best evidence procurable. In such a case doubtless the evidence of the attorney would be more valuable than that of the nominal petitioner, even if the latter could be got at in time.

**Lay Auditors** At a public examination held last week in the Sheffield Bankruptcy Court in the failure of a Sheffield accountant, the debtor admitted that the accounts of a provident society of which he was the treasurer were audited last December, and that upon the occasion of such audit he was not asked to produce the bank pass book. While audits continue to be conducted upon such lines it is, of course, anything but surprising that from time to time deficiencies should arise. What seems to be a somewhat similar case came to light a short time since in connection with the affairs of a society, where at a general meeting, on a decision to wind up, the directors suggested that they had been the victims of one of the most daring frauds imaginable. Upon this point, however, the members (if we may judge from the report before us) appeared somewhat sceptical. In the absence of detailed information it would, of course, be premature to apportion blame, but we cannot help thinking that in such cases it is *prima facie* the auditors who should be called upon for an explanation.

**Profits and Depreciation.** The Controller of the London County Council gave evidence before Sir Lewis McIver's Committee of the House of Commons on Tramway Bills last week, and admitted that if an allowance of one penny per mile had been made for renewals in 1905-6, as had been done in previous years, the surplus of four thousand pounds shown upon the accounts would have been converted into a deficiency of six thousand pounds. He added, however, that this Renewal Fund was for future renewals, and had nothing to do with the proper maintenance of the system. It is a little difficult to know what is expected to be implied by such a qualification. If the allowance of one penny per mile was necessary in previous years, it must obviously have been equally necessary in the year 1905-6. Can it have been that the reason why it was not provided for was because there were not sufficient profits earned to enable it to be charged without showing a loss on the year's working?

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

## Income Tax.

*(To the Editor of The Accountant.)*

SIR,—As a member of a firm of Chartered Accountants it frequently falls to my lot to compute for clients the amount that should be returned for assessment to income-tax, and in a great many cases I fill in the form of return myself, after which the client signs and forwards it to the Inland Revenue authorities.

The Surveyor of Taxes for the district being aware of this practice has requested me to provide him with a list of all clients who entrust to my firm the computing of the amount which they return for assessment, his reason for making such a request being that he considered thereby a certain amount of trouble would be saved, as he would not need to question the accuracy of the return of any client whose name appeared upon the list provided by my firm.

After considering the matter I informed the Surveyor that his request could not be complied with, and that my firm was strongly of the opinion that to supply such a list as he required would be to commit a breach of professional secrecy. The Surveyor, however, was greatly surprised at this decision, and informed me that such a list was actually supplied to him by all the other Chartered Accountants in the town, and that he was astonished that my firm should be the only one to take exception to this most desirable form of procedure.

I do not know whether there would be much harm in supplying the Surveyor with this list, providing, of course, that our clients knew that they were being listed up in this fashion; but to my mind the chief objection to it is that a Surveyor has no right to make such a request, and I think that any accountant who complies with it is, to say the least, creating a very undesirable precedent; in fact, we do not know that matters would

end here, and in course of time Chartered Accountants might easily become gratuitous assessors of income-tax.

Perhaps, Mr. Editor, you or some of your readers will express an opinion upon this rather important point, and oblige,

Yours faithfully,

A.C.A.

### Depreciation of Printing Machinery.

*To the Editor of The Accountant.*

SIR,—I shall be much obliged if any of your readers can tell me what allowance is made by their local Surveyor of Taxes for depreciation on printing machinery. This machinery is very fast working, and the wear and tear is naturally heavy, so that it would appear that a higher rate of depreciation than the ordinary 5 per cent. on machinery should be allowed in such a case.

If any of your readers can instance an example where they have obtained a higher rate than 5 per cent. it would be of material assistance to me.

I am, yours truly,

May 2nd 1906.

ONE INTERESTED.

### Registration for Accountants.

*(To the Editor of The Accountant.)*

SIR,—The remarks of the President at the annual meeting of the Institute on the 2nd inst. with reference to the Chartered Societies' Bill and its relation to the Society of Accountants and Auditors are most commendable, especially taken in conjunction with the undertaking that Mr. White's motion will be considered by the Council. The time is surely ripe for prompt friendly action by all the Chartered bodies, together with the Society of Accountants and Auditors, to promote a Bill which will fairly recognise the position of these Societies, and compel the registration of all practising accountants. The satisfactory solution desiderated by Mr. Gane—on the lines of Mr. White's proposed motion, probably—is surely not difficult of attainment, if tackled from a business point of view.

Another question which I would suggest to the consideration of the Joint Committee of the Chartered Societies, and that is, the restriction of apprentices. I understand the Institute of Chartered Accountants of England and Wales, and the Society of Accountants and Auditors, allow two apprentices per member, unless

by permission of their respective Councils. Whether this is so or not, the fact remains that no restriction obtains in Scotland, and the number of young Chartered Accountants engaged as clerks, and the number of apprentices at present in Scotland, discount all the requirements of the profession for several years, even allowing for the annual overflow to England.

Yours, &c.,

5th May 1906.

SCOTTICE.

### Hire and Purchase Accounts.

*(To the Editor of The Accountant.)*

SIR,—In Mr. Barber's interesting lecture on Colliery Accounts, reported in your columns on the 21st April, the purchase of wagons on the hire and purchase system is dealt with, and the plans suggested seem open to question.

Two alternative plans are mentioned. The first is to "calculate the present value of the total payment and take that as the capital. The difference between the present value and the total is the charge to Revenue, which should be debited in sevenths annually."

The last sentence would seem to contain an error, for the earlier years should bear the larger share of the Revenue charge, seeing that in those years the greater proportion of the value of the wagons is "on loan," so to speak. The capital value still "unpaid for" is reduced by every payment of an instalment, and the Revenue charge (for interest) should be reduced correspondingly.

On the above principle the interest, as reckoned on the second method suggested by Mr. Barber, should be calculated, not on the unpaid quarterly balances, but on the balances of unpaid capital value from time to time represented therein.

Mr. Barber would very possibly explain that the method of charging equal amounts to Revenue is largely a matter of convenience, and where the sum involved is not large this justification may hold good. At the same time, it may be noted that the increase in charges for repairs towards the end of the period would tend somewhat to counterbalance the decrease in interest charged.

Yours truly,

H. W. HAZLEHURST, A.C.A.

Oldham, 4th May 1906.

**Forfeited Shares.***(To the Editor of The Accountant.)*

SIR,—In your issue of the 21st April 1906 appears a paper by Mr. W. O. Buxton concerning forfeited shares, in which it is stated that the only ground on which shares can be forfeited is for non-payment of calls (see p. 507 *Accountant*). This was surely written without full consideration, and does not correctly state the existing law. I have before me an article of a company which provides that the shares of a member may be forfeited if he is in any way indebted to the company, and does not pay the debt after formal demand. This power amounts to more than a lien on the member's shares. The article was drawn by counsel, and has been acted upon.

I should like to add that I have read Mr. Buxton's paper with great interest, as it is evidently carefully written and a useful contribution on the subject it deals with.

Yours faithfully,

Gravesend, 7th May 1906.

A. WARR KING.

[If our correspondent will give us the exact wording of the article referred to, we shall be glad. *Prima facie* it seems bad.—ED. *Acct.*]

**The Chartered Accountants' Golf Club.**

Mr. H. W. D. Soper beat Mr. H. Wingfield in the Final of the Annual Tournament.

**MEDAL COMPETITION.**

1	Mr. W. Clark Pettigrew .. ..	89 - 4 = 85
2	„ M. Jenks .. ..	94 - 8 = 86
	{ „ D. Hill, Junr. .. ..	93 - 6 = 87
3	„ S. Cronk .. ..	94 - 7 = 87
	{ „ T. Wise .. ..	101 - 14 = 87
6	„ E. C. Brown .. ..	100 - 10 = 90
	{ „ F. H. Gruning .. ..	106 - 14 = 92
7	„ S. C. Leonard .. ..	101 - 9 = 92
	{ „ T. D. Cocke .. ..	107 - 15 = 92
10	„ W. E. Mounsey .. ..	114 - 20 = 94
	{ „ A. Page .. ..	109 - 14 = 95
11	„ H. W. D. Soper .. ..	103 - 8 = 95
13	„ W. W. Read .. ..	106 - 10 = 96

12 others made no return.

The 9th annual general meeting was held after the competition, and the following officers were re-elected:—

President, Mr. Ernest Cooper; Captain, Mr. J. Gurney Fowler; Hon. Treasurer, Mr. A. O. Miles; Hon. Secretary, N. Hill, Junr.

Messrs. J. Ford and J. Gane retired from Committee, and, being eligible, were re-elected.

The Auditors, Mr. Frank Hyland and Mr. A. S. Gedge, were also re-elected.

The next competitions will probably take place at Sandwich and Deal, about the 28th and 29th June, if permission can be obtained.

**Review.****A Manual of Bookkeeping for Solicitors.**

By J. M. WOODMAN, F.C.A.

London, 1906: Butterworth & Co., 11 & 12 Bell Yard, Temple Bar. Second Edition. Price 5s.

It is many years since the first edition of this work was issued, and in the meanwhile a considerable amount of attention has been devoted to the subject of Solicitors' Accounts. The need for an up-to-date treatment of the subject is thus apparent, but it seems doubtful whether the numerous *pro forma* rulings have received this careful revision, as the dates in most cases still relate to the 19th century. A system providing for the separation of own and clients' moneys has now been added, but in these days it seems to us that it would have been better to treat that as the foundation of the whole system of bookkeeping, and not merely as an alternative system. We formed so favourable an opinion of this manual when it was first issued in 1888 that we cannot help regretting that more attention has not been devoted to bringing it properly into line with the very altered conditions at present obtaining. Had the work been rewritten instead of being merely revised, its value at the present time would, we think, have been materially improved.

**Meetings for the ensuing Week.**

*Monday*—MANCHESTER CHARTERED ACCOUNTANTS STUDENTS' SOCIETY.—Annual Meeting.

*Tuesday*—BIRMINGHAM CHARTERED ACCOUNTANT STUDENTS' SOCIETY.—Annual Meeting, at 8 Newhall Street. 6.30 p.m.

## The American Central Bank Scheme.

A SCHEME is on foot in New York to establish a great Central Bank, with a capital of \$50,000 or \$100,000, for the purpose of regulating the money market.

The general question of the utility in the States of a Central Bank, similar to those of Europe, has been taken up by the Special Committee on Currency Reform recently appointed by the New York Chamber of Commerce.

This Special Committee is composed of John Claflin, Chairman; Frank A. Vanderlip (Vice-President of the National City Bank), Vice-Chairman; Isidor Straus; Dumont Clark; Charles A. Conant; and Joseph French Johnson (Dean of the School of Commerce, Accounts, and Finance, New York University), Secretary of the Committee; and in addition to the main and most important question, the Committee have put forward 27 queries, which have been addressed to the various bankers throughout the country.

These questions are very interesting indeed, in view of the monetary situation in New York, and our readers will doubtless be glad to have them *in extenso*.

Do you believe that a Central Note-Issuing Bank, similar to those in France, Germany, Austria-Hungary, and other countries in Europe, with branches in leading cities and with the power to re-discount for national banks and State banking institutions, but not for individuals, would be a better solution of the present currency problem than a plan permitting all banks to issue notes against their resources?

(1) Do you believe some change is desirable in the existing system of issuing bank-note currency?

(2) Do you believe the Sub-Treasury is a disturbing factor in the money market?

(3) If so, do you believe that provision should be made for regular deposit in the banks of the surplus of Government funds, above a reasonable balance, upon such terms as will afford safety and perhaps a small profit to the Treasury?

(4) Do you regard the bank note as a form of bank obligation the same in principle as the obligation to pay a deposit on demand, and do you believe that the use of bank notes where they are the most convenient form of credit should be freed from existing restrictions, except such as are required to insure safety, acceptability, and conversion on demand into standard money?

(5) Is it important, if a more flexible currency system is sought, to take measures to avoid impairing the market value of United States bonds as a basis of circulation?

(6) If new currency issues are made, is it advisable that they be made a homogeneous part of the present note-issue system by increasing somewhat above par the proportion of notes which may be issued upon bonds, or should an independent system of note-issue be adopted?

(7) Do you believe that national banks should be authorised to issue a certain proportion of currency upon their general resources, such notes being secured in case of failure by a guaranty fund or otherwise?

(8) Is it advisable, if additional bank-note circulation is authorised, to subject it to a graduated tax intended to compel the retirement of the notes under the higher rates of taxation when the special need for them has passed?

(9) If authority is given to issue additional bank-notes, in what proportion to capital do you think they should be allowed, and under what rate of taxation, if you favour a graduated tax?

(10) If you do not favour the issue of currency under modest rates of taxation, for use under ordinary conditions, do you favour an emergency circulation issued at a high tax, as proposed by Secretary Shaw in his annual report for 1905?

(11) Do you favour the constitution of a guaranty from the proceeds of taxation to cover the losses on notes for which the assets of a failed bank are insufficient?

(12) The taxes collected on circulation of national banks from 1864 to June 30 1905 reached the sum of \$96,220,997. The failed banks whose affairs have been closed had at the date of failure an outstanding note circulation of \$17,295,748. Dividends paid on claims proved averaged 77.95 per cent. At the same rateable proportion of loss the deficiency on account of notes, if these had not been secured by deposit of bonds, would have amounted to only \$3,813,712 (22.05 per cent. of \$17,295,748), or less than 4 per cent. of the total taxes collected upon circulation. Does this, in your opinion, warrant the conclusion that a guaranty fund consisting of the taxes paid upon circulation would be sufficient to secure the payment in full of the notes of failed banks? If not, upon what grounds do you base your conclusion? What other safeguards, if any, are required to insure the payment in full of the notes of failed banks?

(13) Is it or is it not desirable, if bank notes are issued not fully secured by bonds, to give discretion to the Comptroller of the Currency to require the deposit of collateral with Clearing House Committee or other custodian?

(14) Is it desirable to make bank-notes a first lien upon assets, or should they share only rateably with other claims?

(15) Do you think that a graduate tax upon circulation would tend to secure elasticity and to deter notes that were not needed? Do you think that such tax would produce sufficient elasticity, or do you think additional measures should be taken.

(16) Do you believe that redemption of notes at New York, Chicago, New Orleans, San Francisco, and other United States Sub-Treasury cities, without cost to the bank presenting them, would tend to stimulate redemptions and adapt the currency to commercial needs?

(17) Would you favour a system of note-issue similar to the Canadian, the right of issue being limited to banks of large capital, say not less than \$500,000, with four or more central redemption cities?

(18) Do you believe that a central note-issuing bank, similar to those in France, Germany, Austria-Hungary, and other countries in Europe, with branches in leading cities, and with the power to re-discount for national banks and State banking institutes, but not for individuals, would be a better solution of the present currency problem than a plan of permitting all banks to issue notes against their resources?

(19) Would a central note-issuing bank tend to diminish fluctuations in the rate of interest, to prevent recurring periods of monetary stringency, and to lessen the evils incident to financial crisis?

(20) Should such a bank be made the fiscal agent of the Government in receiving Government funds and paying Treasury drafts, as are the central note-issuing banks of Europe?

(21) Would the operations of such a bank interfere unduly with the business of existing banking institutions, provided it dealt only with banks and not with individuals?

(22) Would country banks regard such a bank as tending to diminish the necessity for borrowing from city correspondents?

(23) Would the fact that such a bank could re-discount for State banking institutions as well as national banks, thus extending the use of its credit and credit currency to both, give such a plan an advantage over a plan whose scope was confined to national banks alone?

(24) Should the Government appoint the officers of such a bank and a majority of the board of directors, or should the control rest with stockholders?

(25) Do you think the headquarters of such a bank should be in Washington or elsewhere?

(26) Do you believe that there are sound political objections, apart from its economic merits, to the creation of such a central bank?

(27) Have you any other suggestions to make regarding the improvement of the currency system?

## Chartered Accountant Students Society of London.

### Parliamentary Companies.

By FRANK NOEL KEEN, LL.B., A.C.A.  
(Of the Middle Temple, Barrister-at-Law.)

A LECTURE delivered before the Chartered Accountant Students Society of London on March 28th 1906.

#### *Choice of Subject.*

I have chosen to deal this evening with the subject of companies incorporated by special Act of Parliament partly

because it is, I think, a little out of the ordinary run of the subjects of your law lectures and partly because it comes within the sphere of private Bill legislation with which I have much to do in the course of my everyday professional work. I do not propose, nor would it be possible in the time at my disposal, to deal with the subject at all comprehensively but I shall endeavour to give you a rough idea of some of the characteristics presented by parliamentary companies, with which it may be the fortune of any of you to become acquainted in the capacity of accountant, auditor, secretary, liquidator, receiver, or expert witness, and I am afraid that in the course of the lecture I must trouble you with some very dull extracts from Acts of Parliament.

#### *Class of Companies Dealt with.*

A distinction should be drawn at the outset between two different classes of company regulated by special Act. In the first place there are a few companies formed under the provisions of general Acts, such as limited companies under the Companies Act 1862 and life assurance companies, which find occasion to obtain special Acts for particular purposes—it may be for altering the rights of members, or conferring special powers of borrowing or of reconstructing their Capital Accounts, or for enabling them to carry on some particular businesses requiring special legal privileges (such as the business of gas supply or electric lighting, for instance). In the second place there are companies actually created and incorporated by special Act, and owing their entire existence and constitution to the special legislation affecting them. It is of this second class alone that I propose here to treat—the companies that are purely the creatures of special Act—and I shall throughout have English companies only in mind, ignoring Scotch and Irish.

#### *Effect of a Private Act of Parliament regulating a Company.*

It should always be remembered that the provisions of the Acts relating to these companies, no matter how trivial the subjects to which they happen to refer, are part of the law of the land. In the case of the ordinary limited company formed under the Companies Act 1862 both the powers of the company and matters of detail affecting its management are regulated by the memorandum and articles of association which have no statutory force and are invalid if and so far as they conflict with the general law, but in the case of the parliamentary company everything is regulated by the special Act whose provisions are clothed with just as much authority as those of the Companies Act 1862 itself or any other general statute. The theory of the English Constitution gives complete sovereignty to the King in Parliament. It is said that an Act of Parliament can do anything except change a man

into a woman or a woman into a man, and I can assure you, from some considerable acquaintance with the contents of Private Acts, that Parliament sometimes succeeds in giving its seal to enactments which effect results widely different from those probably within the contemplation of the legislators and the parties interested.

Private legislation in company matters is thus a very convenient and useful instrument but also an instrument that needs very careful handling. By means of appropriate wording in a private Act a company can, if Parliament approves, be invested with any power or subjected to any limitation suitable to its special circumstances without any risk that in subsequent legal proceedings such power or limitation can be held illegal and void; but on the other hand when once the Act containing such power or limitation has received the Royal Assent it cannot be annulled or altered in any manner save under the authority of a further Act of Parliament.

#### *Promotion of a Parliamentary Company.*

Before proceeding to consider the ordinary features of the constitution of a company incorporated by special Act I propose to say something as to the promotion of such a company. Until the special Act is passed the company has no legal existence and cannot itself enter into any transaction nor can anyone act as agent so as to bind the company when it comes into existence. The responsibility for matters relating to the future company and for the proceedings on the Bill in Parliament is taken by a promoter or promoters, who provide all the necessary costs and expenses; and the Act when passed always contains in its last section a provision specially empowering the company to pay the costs charges and expenses of and incident to the preparing obtaining and passing of the Act, which provision has been interpreted by the Courts as conferring upon the responsible promoters the right to recover their disbursements from the company by action but not as conferring a right of action against the company upon any solicitors engineers or other persons concerned in the promotion of the Bill but employed by the responsible promoters under contract. The promoters of a parliamentary company generally do not belong to the professional promoting class frequently met with in connection with limited companies. Generally speaking they are landowners, traders, or other persons of means in the locality in which the company is intended to operate, who make a considerable subscription to the company's capital and are named in the Act as being the first members of the company, all or some of them being also named in the Act as the first directors. When this plan is strictly followed no occasion arises for the payment of promotion money, but in some cases, and I believe the practice is growing, syndicates are formed for the purpose of floating parliamentary undertakings, but the only way, I believe, in

which anything in the nature of promotion money can be paid is through the mediumship of a contractor who undertakes the construction of the works of the company. The necessary preliminary expenses in respect of professional costs, stamp duties, advertisements, and other similar charges are recognised as properly payable out of the capital funds of a parliamentary company but, so far as I know, Parliament never sanctions the grant to a company of power to pay promotion money nor does the law imply such a power as incidental to the company's authorised operations. In cases however where the backing given to the company by persons interested in the locality to be served by its undertaking is not sufficient to start it fairly on its way it is, I believe, sometimes found that the prospect of obtaining the contract for constructing the works of the company on profitable terms is sufficient inducement to a contractor to guarantee the subscription of the required capital and either himself to take up shares or to provide the commissions profits and expenses necessary for attracting money from financial quarters.

#### *Prospectus.*

A prospectus issued for the purpose of inviting subscriptions for the capital of a parliamentary company stands in a very different position from that of the prospectus of an ordinary limited company since the provisions of the Companies Act 1900 as to the matters to be disclosed and other conditions to be complied with in connection with prospectuses have no application to it. The prospectus of a parliamentary company is however subject to the common law as to the consequences of misrepresentation and of course therefore any parties responsible for its issue have every reason for making sure that it truthfully and fairly represents the facts relating to the company.

#### *Incorporation of Companies by Special Act.*

The practice of incorporating public companies by special Act dates from a period long previous to the existence of the general Acts for registration of joint-stock companies. I cannot tell you when it originated, but I find it, in practice, no very unusual thing to have to wade through ponderous company legislation enacted in the reign of some one of the Georges. Before 1845 the Acts were always of great length because each one had to contain provisions for regulating the company's proceedings in matters of detail which, from that time onwards, the promoters were enabled to provide for by incorporating, with or without modification, the provisions of certain "Clauses" Acts as they are called. These Clauses Acts set out, in groups of sections convenient for adoption in whole or in part, certain provisions which, at the time of their enactment, were commonly repeated in the special Acts of company after company.



*Use of "Clauses" Acts.*

It is desirable to realise very clearly what is the meaning and the effect of the incorporation of a Clauses Act. Suppose that you are appointed to act as auditor of a parliamentary company, say a gas company incorporated by special Act, and you wish to familiarise yourself with the statutory provisions regulating it. You obtain a copy of the special Act and commence to read it. You may expect to find that the first section gives the short title by which the Act is to be cited. The second section has against it the marginal note "Incorporation of Acts." I will take one at random and read you what it says. This is from the Epping Gas Act 1905:—

The following Acts and parts of Acts are hereby incorporated with this Act (namely):—

The Companies Clauses Consolidation Act 1845 (except the provisions relating to the conversion of borrowed money into capital):

Part I. (relating to cancellation and surrender of shares)  
Part II. (relating to additional capital) and Part III. (relating to debenture stock) of the Companies Clauses Act 1863 as amended by subsequent Acts:

The Lands Clauses Acts (except the provisions thereof with respect to the purchase and taking of lands otherwise than by agreement and with respect to the entry upon lands by the promoters of the undertaking):

The Gasworks Clauses Act 1847 (except Sections 30 to 34) and the Gasworks Clauses Act 1871: Provided that Section 13 of the former Act shall be read as if the words "or any premises" were inserted after the words "private building."

That means that each of the Clauses Acts there named, to the extent and subject to the modifications there mentioned, must be taken to be reprinted word for word in the Epping Gas Act 1905 and read as part of that Act subject to this proviso that if it is found that any of the provisions of the Clauses Acts thus incorporated are inconsistent with special enactments contained in the main body of the Act then such special enactments must be taken as overriding those provisions of the Clauses Acts. So far as possible however a consistent interpretation must be found for all parts of the Act taken as a whole including the incorporated clauses.

*Companies Clauses Acts.*

The first of the Acts thus incorporated is the Companies Clauses Consolidation Act 1845 and this will be found similarly incorporated in the Act of any parliamentary company whether formed to carry on a gasworks, waterworks, railway, tramway, or any other kind of undertaking. The subject-matters with which it deals may be indicated roughly by mentioning the headings under which various sets of its clauses are grouped. They are as follows:—

The distribution of the capital of the company into shares  
The payment of subscriptions and the means of enforcing the payment of calls  
The forfeiture of shares for non-payment of calls  
The remedies of creditors of the company against the shareholders  
The borrowing of money by the company on mortgage or bond  
The conversion of the borrowed money into capital  
The consolidation of the shares into stock  
The general meetings of the company and the exercise of the right of voting by the shareholders  
The appointment and rotation of directors  
The powers of the directors and the powers of the company to be exercised only in general meeting  
The proceedings and liabilities of the directors  
The appointment and duties of auditors  
The accountability of the officers of the company  
The keeping of accounts and the right of inspection thereof by the shareholders  
The making of dividends  
The making of bye-laws  
The settlement of disputes by arbitration  
The giving of notices  
The recovery of damages not specially provided for and penalties  
The provision to be made for affording access to the special Act by all parties interested  
The next Act incorporated or rather partly incorporated is the Companies Clauses Act 1863, whose provisions are arranged in four separate parts dealing with separate purposes for which a company may want to provide, viz.:—  
Part I. Cancellation and surrender of shares  
Part II. Additional capital  
Part III. Debenture stock  
Part IV. Change of name.  
This 1863 Act has been amended by the Companies Clauses Act 1869, and the 1845 Act has been amended by the Companies Clauses Consolidation Act 1888 and the Companies Clauses Consolidation Act 1889.

• *Lands Clauses Acts.*

The next Acts incorporated are the Lands Clauses Acts, which consist of the Lands Clauses Consolidation Act 1845 and certain amending Acts, viz.: the Lands Clauses Consolidation Acts Amendment Act 1860, the Lands Clauses Consolidation Act 1869, and the Lands Clauses (Umpire) Act 1883. These Acts provide the detailed machinery for regulating the acquisition of lands required for undertakings or works of a public nature. They include, among other things, provisions authorising sales to be made to the company by trustees and others holding land under conditions which would otherwise prevent their selling,

and provisions as to payment of compensation to persons whose lands are acquired or injuriously affected. The clauses are grouped under two principal divisions according to whether it is intended that the company shall be empowered to compel the owners against their will to sell certain lands to the company or that the company shall be empowered to acquire lands only by agreement with the owners. You will have noticed that in the case of the Epping Gas Company power was sought for acquisition only by agreement and the compulsory purchase provisions were excluded from incorporation. I may say here that the granting of compulsory purchase powers involving, as it does, the forcible interference with private rights of property is hedged about with precautions, and the particular lands sought to be acquired compulsorily have to be defined on plans and described in books of reference deposited in certain public offices when the Bill is in course of promotion, and notices have to be given by the promoters to the landowners affected in accordance with certain Standing Orders of the Houses of Parliament. The compulsory powers also cannot be put into force by the company until the whole of the capital with which it is incorporated is subscribed unless the special Act expressly provides for their exercise on the subscription of some smaller sum.

#### *Gasworks Clauses Acts.*

The other Acts incorporated in the Epping Act are the Gasworks Clauses Acts 1847 and 1871, that of 1847 being the original Act containing the general provisions as to gas supply commonly repeated in the special Acts of all gas companies at the time when it was passed, and the Act of 1871 containing amending provisions and further clauses which had become common by 1871. I may add here that there are a good many further clauses which now, after the expiration of another 35 years, have become usual and which the draughtsman gets rather tired of inserting in one Bill after another, and the time has about arrived when Parliament might set itself to the passing of a new Gasworks Clauses Act. Such a measure would not involve any call upon the resources of the Chancellor of the Exchequer and could not attract any obstructive debate, so I think the present Government with its comfortable majority might well undertake it.

#### *Other Clauses Acts.*

These Acts of 1847 and 1871 are of course adopted only where the undertaking to be carried on by the company comprises the supply of gas, and other Clauses Acts are adopted in the case of other undertakings. The titles of the other Clauses Acts in use will serve to indicate the principal classes of undertaking for the carrying on of which parliamentary companies are created. They are:—

The Railways Clauses Consolidation Act 1845 and the Railways Clauses Act 1863  
The Harbours, Docks and Piers Clauses Act 1847  
The Waterworks Clauses Acts 1847 and 1863  
The Electric Lighting (Clauses) Act 1899.  
The Tramways Act 1870 (Parts II and III)  
The Markets and Fairs Clauses Act 1847

I should mention that in the case of a railway company there are several general railway Acts which apply to every railway company without being incorporated in the special Act (including the Railway Companies Act 1867, which contains important provisions as to issue of capital and exercise of borrowing powers and as to arrangements with creditors). Similarly in the case of an electric company the Electric Lighting Acts 1882 and 1888 are not incorporated but apply to the company as general Acts.

In the case of the Markets and Fairs Clauses Act 1847 it is not often now that this is incorporated in the Act of a company, the local authorities having for the most part taken over the work of managing markets and fairs.

#### *Miscellaneous Companies.*

I do not mean to suggest that the above list of Clauses Acts indicates in any way exhaustively the kinds of undertaking for which parliamentary companies are incorporated. All sorts of companies for miscellaneous purposes are projected from time to time and as an example of an unusual sort of scheme submitted to Parliament I may mention that in the present Session a Bill is being promoted to incorporate a company for the purpose of constructing a large main road in West Middlesex, and for acquiring land adjoining this projected road, and developing it as a building estate.

#### *Differences between Acts of Different Companies.*

Now it is obvious that the incorporation of Clauses Acts is calculated to promote similarity in the statutory regulations affecting different companies, but I want particularly to caution you against the drawing of rash generalisations from the knowledge you may acquire of the Acts of particular companies. You should never assume that because a certain regulation has to be complied with by one or two parliamentary companies therefore it has to be complied with by all parliamentary companies, or that because a certain power is vested in one or two companies you have known—say water companies—therefore it is vested in a third water company you may happen to have to deal with. Differences of drafting between the special Acts of different companies of similar type are found in matters both great and small and I feel that I cannot too emphatically recommend you to study carefully closely and patiently the provisions of the Act or Acts governing any company whose powers it may be important for you to be accurately acquainted with.

I now come to consider more in detail some of the statutory provisions affecting parliamentary companies and particularly in relation to those financial and other matters in which you are specially interested, but it must be understood that I cannot give you an account of laws applicable to all companies but merely refer to the contents of the Clauses Acts and to enactments which are more or less commonly found in the special Acts by which companies are governed.

#### *Raising of Capital Moneys.*

The capital funds of parliamentary companies are generally provided by one or more of the following means:—Shares, stock, unsecured bonds, mortgages, secured debentures, and secured debenture stock. The money is usually contributed by private individuals or companies, but in a few exceptional cases you find Parliament authorising subscriptions to be made out of public funds, as for example in the case of the Manchester Ship Canal Company, a considerable part of whose capital expenditure has been provided by the Manchester Corporation under Parliamentary authority. By the Bill I mentioned to you just now as being promoted in the present Session for construction of a main road in West Middlesex it is sought to authorise certain local authorities to take up a limited portion of the capital of the proposed company.

#### *Share and Stock Capital.*

It is common parliamentary practice to draw a distinction between the original capital with which a company's undertaking is started and the additional capital provided for subsequent extensions and improvements, the theory being that, in regard to the more speculative classes of business, the persons who are adventurous enough to embark their money in an untried venture are justified in claiming a larger return upon their investment than those who subscribe to a going concern. The distinction is of less importance in the case of the ordinary shares or stock of companies, such as railway companies, in connection with which no limit of dividend is usually imposed, than in the case of certain companies, such as those for gas and water supply, in which it is usual to allow a dividend up to say 10 per cent. per annum on the original ordinary capital whereas in the case of the additional capital the dividend is limited to a lower maximum rate varying in different instances. In the case of a gas or water company the additional capital is also required to be issued by auction or tender so as to ensure that the highest possible price shall be obtained for it and therefore the lowest possible amount distributed for dividend in comparison with the amount received on Capital Account.

A company cannot attach any preference to particular issues of shares or stock unless in pursuance of statutory

authority. In the case of original capital it is not the ordinary practice to permit any part to be issued as preferred but all is constituted as ordinary capital. Some companies are however given power, under certain conditions, to sub-divide their original ordinary shares after issue into preferred halves and deferred halves, the preferred half of each share being entitled to a non-cumulative preference dividend at a fixed rate before the deferred half receives any dividend, and the deferred half taking the balance of dividend on the whole share, but neither half taking anything at all except so far as the whole share if undivided would have been entitled to dividend. In the case of additional capital it is usual to give a company the option of issuing either ordinary or preference shares or stock. Where preference shares are authorised and Part II. of the Companies Clauses Act 1863 is incorporated that Part regulates the terms of issue except so far as the special Act otherwise provides, and under that Part it is provided that the additional capital may be raised by the issue of new shares or stock either ordinary or preference and either of one class and with like privileges or of several classes and with different privileges and of the same or different amounts and respectively with any fixed fluctuating contingent preferential perpetual terminable deferred or other dividend or interest not exceeding the rate prescribed in the special Act and if no rate is prescribed then not exceeding the rate of 5 per cent. per annum but any preference assigned to any shares or stock so issued is not to affect any guarantee or any preference or priority in payment of dividend or interest on any shares or stock that may have been granted by the company under or confirmed by any previous Act and the preference shares are to be non-cumulative. Part II. also provides, in the case of additional capital, that the creation of the new shares or stock must be sanctioned by a prescribed majority of votes at a meeting of shareholders specially convened, and further provides for the new shares or stock being first offered at par to holders of the existing ordinary shares or stock in cases where the ordinary shares or stock are at a premium. These provisions are however subject to variation by the special Act, and, as I have already mentioned, it is the regular practice in the case of gas and water companies to require the application of what are known as the "auction clauses," under which the shares or stock constituting the additional capital must be offered for sale by auction or tender in a prescribed manner so as to yield the company the highest price obtainable. In some recent cases power has been given to a company before offering shares to existing shareholders or for sale by auction or tender to offer them on certain terms to consumers of the company's gas and *employees* in the service of the company (see for example Section 24 of the Brentwood Gas Act 1905).

Part II. makes no provision as to a preference being given in respect of repayment of capital, and the preference and ordinary shares in a parliamentary company would doubtless be entitled to rank upon equal terms for the purpose of a distribution of assets in the absence of any direction to the contrary in the special Act and the inclusion of such a direction would be quite unusual. I believe it is not so unusual, though still by no means common, for a special Act to sanction the issue of shares carrying the right to a cumulative preference dividend.

#### *Limitation of Dividend.*

It is quite a common thing for a parliamentary company to be placed under a limitation as regards the rate of dividend it may pay upon its ordinary capital and in the case of gas and water companies the Gasworks and Waterworks Clauses Acts provide that the profits of the undertaking to be distributed in any year shall not exceed the rate prescribed in the special Act or where no rate is so prescribed they shall not exceed 10 per cent. per annum on the paid-up capital in the undertaking unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of that rate, any surplus profits beyond that rate being, subject to the question of reserve funds (which I will deal with later on), applicable to reduction of the charges for supply of gas or water, and I may mention that for this purpose the income-tax payable on the profits may not be charged before arriving at the 10 per cent. but has to be borne by the shareholders out of the 10 per cent.

#### *Sliding Scale.*

Another common method of regulating by special Act the dividend on ordinary capital in the case of gas companies is by the application of a sliding scale, under which the rate of dividend payable varies automatically in a certain inverse ratio with the price charged to consumers for gas. In such cases the special Act fixes a standard price of gas and a corresponding standard rate of dividend and provides that for every penny or part of a penny by which the actual price charged for gas is less than the standard price the dividend may exceed the standard rate by a fixed proportion, say five shillings or two shillings and sixpence per one hundred pounds, and for every penny or part of a penny by which the actual price charged for gas exceeds the standard price the dividend must be less than the standard rate by at least that fixed proportion. A similar principle has been applied in the case of some of the large electric power supply companies.

#### *Proportion between Dividends on Different Classes of Ordinary Shares or Stock.*

In cases where the dividends on different classes of ordinary shares or stock are limited to different maximum

rates it is usual for the special Act to contain a direction that in the event of the profits of any year being insufficient to pay the full maximum dividends a proportionate reduction shall be made in the dividend payable on each class.

#### *Premiums on Issue of Shares and Stock.*

It is desirable to notice that where a power to raise additional capital is conferred it is generally framed in such a manner that the sum named in the special Act as authorised to be raised includes the proceeds of any premiums obtained upon the issue, so that in cases where a premium is obtained the nominal amount of the shares or stock capable of being issued may be considerably less than the amount named in the additional capital clause of the special Act.

#### *Issue of Shares and Stock at a Discount.*

One striking difference between parliamentary companies and limited companies registered under the Companies Acts is that a parliamentary company is usually permitted in case of need to issue its shares in any additional capital at a discount.

As regards original capital Section 8 of the Companies Clauses Consolidation Act 1845 which prescribes who shall be shareholders says "Every person who shall have subscribed the prescribed sum or upwards to the capital of the company or shall otherwise have become entitled to a share in the company and whose name shall have been entered on the Register of Shareholders hereinafter mentioned shall be deemed a shareholder of the company." It is very doubtful whether any shares whose issue is governed solely by this section and which are to be subject to payment by calls can be issued at a discount. The point was incidentally mentioned, but not decided, by the Court of Appeal in the case of *Webb v. Shropshire Railways Co.* (1893) 3 Ch. 307, and by Romer, J., in *Statham v. Brighton Marine, &c. Pier Co.* (1899) 1 Ch. 199, and I am not aware that it has subsequently come up for decision. In the *Shropshire Railways* case it was held that original capital created, under the terms of a special Act, in the form of stock instead of shares could, in an appropriate case, be issued as fully paid at a discount. In the *Brighton* case it was held that original shares could similarly be issued at a discount when issued as fully paid but Romer J. in that case mentioned that it was his present opinion (though he had not expressly to decide the point) that if original shares were subscribed for they must be paid for in full.

In the case of additional capital however Section 21 of the Companies Clauses Act 1863 provides that, subject to the provisions I have already mentioned as to the new shares or stock being offered to the holders of ordinary shares or stock when this is at a premium, the company may from time to time dispose of new shares and new stock at such times to such persons on such terms and

conditions and in such manner as the directors think advantageous. As originally enacted that section then proceeded as follows:—"But so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof." This proviso was repealed by the Companies Clauses Act 1869 which then enacts in Sections 6, 7, and 8 as follows:—

Section 6. Any shares forming part of the capital (whether original or additional) authorised to be raised by any special Act of a company passed before the present session which have not been disposed of may be disposed of in manner provided by Part II. of the Companies Clauses Act 1863 as amended by this Act and that part as so amended shall be deemed incorporated with such special Act accordingly.

7. Provided that any shares the creation whereof has been authorised by a company but which have not been issued before the passing of this Act shall not be issued on any terms other than those whereon the same might have been issued if this Act had not been passed unless and until the issue thereof on terms other than as aforesaid is after the passing of this Act authorised by the company in manner provided by Part II of the Companies Clauses Act 1863.

8. Provided always that this Act shall not be construed to alter or extend the provisions of any Act relating to share capital in respect of which the amount of profits to be divided is limited to a fixed rate per centum upon the paid-up capital of the company.

#### *Issue of Shares as Fully Paid.*

As a general rule there is nothing in a company's special Act to prevent the issue of shares as fully paid in consideration of money's worth instead of money, and the Companies Clauses Acts contain no provision stipulating for the prior registration of a contract in writing or for observance of any other formalities in respect to such an issue. Any such transaction must however be perfectly *bond fide* and in case of the issue of shares either at a discount or as fully paid it will be a misfeasance on the part of the directors for which they will be answerable in damages if the company does not receive what is, under all the circumstances of the case, a fair equivalent for the shares parted with.

#### *Calls.*

The conditions under which the amount payable upon the shares in a parliamentary company may be called up are usually prescribed in the special Act, which generally includes a provision that not more than one-fifth of the amount of a share shall be called up at one time. In the case however of the issue of additional capital by auction or tender the auction clauses already referred to provide for the payment up of the full price of the shares together with any premium within three months after the sale. Section 24 of the Companies Clauses Consolidation

Act 1845 provides that a company may receive payments from shareholders in advance of calls and may in respect thereof pay interest at such rate not exceeding the legal rate of interest for the time being as the shareholder and the company may agree upon.

#### *Forfeiture and Surrender of Shares.*

The Companies Clauses Acts contain provisions authorising the forfeiture of shares for non-payment of calls, and allowing the company in case of forfeiture either, with the consent of the shareholder and the sanction of a general meeting, to cancel and extinguish the shares, or, without the consent of the shareholder, to sell the shares and, if it proves impossible to sell them for a sum equal to the arrears of calls interest and expenses due thereon, to cancel the shares subject to certain conditions and with the authority of the resolution of a general meeting and without prejudice to the right to recover subsequently from the shareholder the amount due less the value of the shares. Section 9 of the Companies Clauses Act 1863 provides that the company may from time to time accept on such terms as they think fit surrenders of any shares which have not been fully paid up. Section 10 of the same Act provides that the company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share. Section 11 makes provision as to the issue of new shares in place of any that have been cancelled or surrendered.

#### *Return of Capital to Shareholders.*

The circumstances under which capital paid up in respect of shares may be returned to shareholders and the consequences to follow from any such return are not very clearly prescribed under the Companies Clauses Acts, but the strict legal rule against reduction of capital which you are accustomed to in the case of ordinary limited companies clearly does not apply, since Section 121 of the Companies Clauses Consolidation Act 1845 in dealing with dividends makes the following provision:—"The company shall not make any dividend whereby their capital stock will be in any degree reduced; provided always that the word 'dividend' shall not be construed to apply to a return of any portion of the capital stock with the consent of all the mortgagees and bond creditors of the company due notice being given for that purpose at an extraordinary meeting to be convened for that object."

#### *Consolidation of Shares into Stock.*

Shares when fully paid up may be consolidated into stock with the consent of a specified majority at a general meeting of the company in accordance with provisions in that behalf contained in the 1845 Clauses Act and a company is sometimes authorised by its special Act to issue capital in the form of stock instead of shares, the stock-

holders being entitled to rights corresponding to those of shareholders.

#### *Borrowing Powers.*

We come now to the question of the raising of capital by means of loans. A parliamentary company has no power to borrow at all unless authority so to do is contained in the express provisions of the Acts of Parliament by which it is governed, and it cannot borrow by any method other than such as that authority expressly or impliedly covers.

The Companies Clauses Acts deal only with the machinery by which borrowing is to be regulated where it is allowed and they do not confer any actual power to borrow but leave this to be conferred, if at all, by the special Act. It is the ordinary practice for the special Act of a company to confer such a power but to limit the amount which may be borrowed. The method of defining the limitation varies considerably in different cases and careful attention should be paid to the wording of the borrowing clauses. It is the ordinary practice to define the borrowing powers in such a way that the maximum amount authorised to be borrowed shall bear some definite relation to the amount of capital raised by shares or stock, and at the present time the proportion commonly allowed is one-third. In some cases the plan is adopted of authorising the company to borrow sums not exceeding in the whole one-third part of the capital raised and actually issued by shares or stock but not to borrow any part thereof until the whole of the shares and stock at the time issued together with any premium thereon has been fully paid up. Another plan is to authorise the company to borrow up to a fixed sum (say £300,000 where the share capital is £900,000) but not to borrow any part thereof until the whole of the share capital is issued and one-half thereof is paid up and one-fifth part of the amount of each separate share has been paid up. Another plan is to divide the share capital into blocks (say of £300,000 each) and to provide that in respect of each block, when it is all issued and one-half is fully paid up and one-fifth of each separate share in the block is paid up, the company may borrow a fixed amount (say £100,000). In addition to any conditions and limitations which may be prescribed by the special Act, Section 38 of the Companies Clauses Consolidation Act 1845 provides that the order of a general meeting of the company shall be required for sanctioning the raising of any moneys which the company are authorised to borrow on mortgage or bond.

In some cases the rate of interest which the company may pay upon loans is restricted by the prescribing of a maximum in the special Act.

#### *Debenture Stock.*

As an alternative to borrowing on mortgage a company is usually empowered, with the sanction of a prescribed

majority of votes at a general meeting of the company, to create and issue debenture stock in manner provided by Part III. of the Companies Clauses Act 1863. That Act makes the debenture stock with the interest thereon a charge upon the undertaking of the company prior to all shares or stock of the company, and gives the interest on debenture stock priority of payment over all dividends or interest on any shares or stock of the company whether ordinary or preference or guaranteed, and provides that such interest shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock, but that the holders of the debenture stock shall not as among themselves be entitled to any preference or priority. These provisions are however usually varied by the special Act to the extent of making the interest on all debenture stock and all mortgages issued under the Act rank *pari passu* and have priority over all principal moneys secured by such mortgages.

Section 34 of the 1863 Act provides that the company's powers of borrowing and reborrowing shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

Under Section 35 of the same Act "mortgage preference stock" and "funded debt" are classed along with debenture stock, and the provisions of that Act are made applicable to them as if they were mentioned in place of debenture stock.

Originally the rate of interest on debenture stock was limited by Section 22 of the 1863 Act to 4 per cent. per annum as a maximum, but this limitation was repealed by the Companies Clauses Act 1869 and the repeal was made applicable to companies then already working under the 1863 Act subject to a requirement for getting a fresh sanction from a general meeting in certain cases where the raising of the debenture stock had already been sanctioned by a general meeting before the date of the repeal. The 1869 Act also made the powers of issuing debenture stock under the 1863 Act applicable generally to then existing companies who had power to raise money by mortgage or bond.

#### *Rights of Mortgagees; Receivers.*

The Companies Clauses Consolidation Act 1845 authorises the use of short statutory forms of mortgage and bond and regulates the rights of the mortgagees and obligees thereunder. The special Act usually authorises the mortgagees to enforce payment of arrears of interest or principal or of principal and interest due on their mortgages by the appointment of a receiver subject to a proviso that where it is principal only that is in arrear the amount owing must be not less than a prescribed sum—say £1,000. The inclusion of such a power brings into

operation machinery provided in the 1845 Act under which a receiver of the revenue of the undertaking mortgaged may be appointed by two justices on the application of the mortgagees. Section 54 of that Act which deals with the appointment of the receiver reads as follows:—"Every application for a receiver in the cases aforesaid shall be made to two justices and on any such application it shall be lawful for such justices by order in writing after hearing the parties to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest or such principal and interest as the case may be until such interest or until such principal and interest as the case may be together with all costs including the charges of receiving the tolls or sums aforesaid be fully paid and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed and the money so to be received shall be so much money received by or to the use of the party to whom such interest or such principal and interest as the case may be shall be then due and on whose behalf such receiver shall have been appointed and after such interest and costs or such principal interest and costs have been so received the power of such receiver shall cease." This power is additional to the general power vested in the High Court of Justice under Section 25 of the Judicature Act 1873 to appoint receivers in all cases where it is "just and convenient."

#### *Conversion of Borrowing Powers into Capital.*

The Companies Clauses Consolidation Act 1845 contains provisions authorising the company, with the sanction of a general meeting, in lieu of exercising the whole or some part of its borrowing powers, to raise capital to a corresponding amount by the creation of new shares or after having borrowed the money to continue at interest only a part thereof and to raise part by creating new shares; such shares being considered as part of the general capital but being, in case the existing shares of the company are at a premium, offered in the first instance to the existing shareholders in proportion to the existing shares held by them respectively. In the case of gas and water companies whose dividends are limited to a prescribed maximum it has become the general practice for the special Act to exclude the operation of these clauses as to conversion of borrowing powers into capital. In the Acts of some few of such companies however the clauses are retained but a special provision is inserted providing that the company shall not have power to raise the money by shares or stock instead of borrowing or to convert into capital the money borrowed unless in either case all dividends upon such shares or stock are limited to a rate not exceeding 5 per cent. per annum.

#### *Issue of Debenture Stock by Auction.*

In the case of some gas companies the provisions as to issue by auction or tender to which I have already referred as applied to the raising of additional capital by shares or stock have been made applicable to mortgages and debenture stock to be created by the company (see for example Section 39 of the Bradford-on-Avon Gas Act 1902).

#### *Issue of Debentures at a Discount or as Fully Paid.*

The issuing of debentures or debenture stock by a parliamentary company at a discount or in consideration of money's worth instead of money, unless there is anything in the special Act to prohibit it, is a legitimate transaction provided that it is perfectly *bond fide*; but in this case, as in the case of shares and stock, the obligation rests upon the directors of making sure that the consideration obtained by the company is adequate to the value of the securities issued.

#### *Re-borrowing.*

Under Section 39 of the Companies Clauses Consolidation Act 1845 and Section 4 of the Companies Clauses Act 1869 a company may re-borrow moneys which have been borrowed in exercise of its borrowing powers and subsequently paid off, or may borrow for the purpose of paying off moneys borrowed in exercise of its borrowing powers.

#### *Application of Capital Moneys.*

Having thus dealt with the raising of capital moneys by a parliamentary company it is appropriate now to deal with the purposes to which they may be applied. Section 65 of the Companies Clauses Consolidation Act 1845 reads as follows:—"And be it enacted that all the money raised by the company whether by subscriptions of the shareholders or by loan or otherwise shall be applied firstly in paying the costs and expenses incurred in obtaining the special Act and all expenses incident thereto and secondly in carrying the purposes of the company into execution." Besides incorporating this it is the constant practice for the special Act of a company to include a general provision that all moneys raised under it (whether by shares stock debenture stock or borrowing) shall be applied only to the purposes of the Act to which capital is properly applicable. In cases where debenture stock is issued in accordance with the Companies Clauses Act 1863 Section 32 of that Act provides that the money raised by such stock shall be applied exclusively either in paying off money due by the company on mortgage or bond or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock, and Section 33 provides that separate accounts shall be kept by the company showing how much money has been received for or on account of

debenture stock and how much money borrowed or owing on mortgage or bond or which they have power so to borrow has been paid off by debenture stock or raised thereby instead of being borrowed on mortgage or bond.

#### *Double-Account System.*

Thus the parliamentary company is bound by statutory obligation to make a broad line of distinction between its capital moneys and its revenue moneys, and this is given practical effect to by the method of account keeping commonly described as "the Double-account System" with which you are doubtless familiar from your book-keeping studies and auditing practice.

#### *Payment of Interest during Construction of Works.*

These general provisions are sometimes overridden or varied to a certain extent by particular provisions in the special Act. For example in the case of capital authorised to be raised for the purpose of constructing works (such as railways for instance) which must necessarily take a long time before they are completed and able to yield any revenue, the company is often empowered to pay out of capital to its shareholders during the period of construction interest on the amount paid up upon their shares, such interest being strictly limited as regards both total amount and rate per cent. and its payment being subject to the observance of certain conditions prescribed by the special Act.

#### *Separation of Capital and Revenue of Different Businesses.*

Sometimes the special Act requires a broad division to be made between the capital moneys, and the revenue also, relating to different purposes. For example a company is sometimes empowered to carry on both a gas undertaking and a water undertaking and in such a case the special Act is sure to provide for the keeping of separate accounts for gas and water respectively. I will take a case at random. Looking at the Hunstanton Water and Gas Act 1897 I find that Section 26 reads as follows:—"Separate Capital and Revenue Accounts shall be kept of the water undertaking and the gas undertaking of the company; each undertaking shall be duly credited and debited with receipts and payments exclusively attributable thereto; the expenses of direction and management and any expenses common to both undertakings shall be from time to time apportioned between them as nearly as conveniently practicable in proportion to the amount of capital paid up and expended on the two undertakings."

#### *Distinction between Capital and Revenue Expenditure.*

The general direction that the moneys raised are only to be applied to purposes of the special Act to which capital is properly applicable involves, in its working out, the solution of the question—what are legitimate capital

purposes? With the practical difficulties attending the allocation and apportionment of different classes of expenditure between capital and revenue you are doubtless familiar and I do not propose to enlarge upon them here but it is desirable to remind you that you may sometimes find in the special Act of a company provisions indicating how certain classes of expenditure must be treated.

#### *Depreciation and Reserve Funds.*

It is not usual for a parliamentary company to be placed under any obligation to provide systematically out of revenue for the depreciation of works and plant in which its capital funds have been sunk, and for this reason the Revenue Account has to bear not only the cost of maintaining the works but also the cost of replacing any parts thereof which may become worn out or otherwise require renewal. It is however usual for parliamentary companies to be empowered, and some companies are required, to create reserve funds, and special funds for purposes such as depreciation insurance or renewal are sometimes authorised. Section 122 of the Companies Clauses Consolidation Act 1845 provides as follows:—"Before apportioning the profits to be divided among the shareholders the directors may if they think fit set aside thereout such sum as they may think proper to meet contingencies or for enlarging repairing or improving the works connected with the undertaking or any part thereof and may divide the balance only among the shareholders."

In cases where the amount of dividend payable on the ordinary capital is unlimited it is not generally of importance to restrict the freedom of a company in the setting aside of reserve funds but in cases where maximum dividends are prescribed and surplus profits have to be applied in reduction of the price of the commodity supplied by the company it may be very desirable in the public interest to limit the amount which may be held in reserve.

Under both the Gasworks Clauses Act 1847 and the Waterworks Clauses Act 1847 the surplus profits over and above the amount required to make up the prescribed rate of dividend are required to be invested and accumulated at compound interest until the fund so formed amounts to the sum prescribed by the special Act or, if no sum is so prescribed, a sum equal to one-tenth of the nominal capital of the company, which sum is to form a reserved fund to answer any deficiency which may at any time happen in the amount of the divisible profits or to meet any extraordinary claim or demand which may at any time arise against the company; and certain conditions are laid down as to the circumstances in which moneys may be drawn out of the fund and provision is made for securing that, subject to accumulation of this fund, the



surplus profits shall be applied in reducing the charges to consumers.

In the case of gas companies whose dividends are regulated by a sliding scale dependent on the price of gas it is usual to authorise (but not require) the company, when the profits in any year amount to more than enough to pay the dividend at the authorised rate, to set aside an amount not exceeding 1 per cent. upon the paid-up capital of the company and to invest and accumulate the sums so set aside until the fund so formed equals one-twentieth of the paid-up capital of the company and to hold this fund as an insurance fund to meet any extraordinary claim demand or charge which may at any time arise against or fall upon the company from accident strikes or other circumstances which in the opinion of a Court of Summary Jurisdiction due care and management could not have prevented, and at the same time to allow the company to carry such amounts as they think fit to a reserve fund but only out of the profits which would otherwise be applicable to the payment of dividend, such reserve fund being available for the payment of dividend in any year in which the profits are insufficient to pay the dividend at the authorised rate.

Other forms of reserve fund provision are applied to suit the circumstances of particular cases. For example take a somewhat novel type of undertaking which was started by the South Staffordshire Mond Gas (Power and Heating) Company's Act 1901. By that Act a maximum dividend of 10 per cent. is authorised and it is required that if in any year there are surplus profits beyond the 10 per cent. one-half shall be applied in forming a reserve fund and the other half in making a rateable reduction of the charges for gas supplied to consumers in the financial year in which the surplus is earned but if and when the reserve fund amounts to one hundred thousand pounds then the whole surplus profits are to be applied in making such reduction.

In connection with any reserve or similar fund the statutory provisions under which it is authorised or required to be accumulated should be consulted for the purpose of ascertaining the securities in which the fund may be invested. In the Companies Clauses Consolidation Act 1845 no stipulation is made with respect to investment. Under the Gasworks Clauses Act 1847 and the Waterworks Clauses Act 1847 the investment must be in "Government or other securities." In special Acts the requirements vary but sometimes "Government or other securities" are required and sometimes "securities in which trustees are "for the time being authorised by law to invest trust "money."

#### *Appropriation of Profits for Dividends.*

While dealing with the question of profits and reserves I should say that by Section 120 of the Companies

Clauses Consolidation Act 1845 it is provided that "previously to every ordinary meeting of the company at "which a dividend is intended to be declared the directors "shall cause a scheme to be prepared showing the profits "if any of the company for the period current since the "preceding ordinary meeting at which a dividend was "declared and apportioning the same or so much thereof "as they may consider applicable to the purposes of dividend among the shareholders according to the shares held "by them respectively the amount paid thereon and the "periods during which the same may have been paid and "shall exhibit such scheme at such ordinary meeting and "at such meeting a dividend may be declared according to "such scheme." Section 123 of the same Act provides that "no dividend shall be paid in respect of any share until "all calls then due in respect of that and every other share "held by the person to whom such dividend may be payable shall have been paid."

#### *Interim Dividends.*

The Companies Clauses Acts do not authorise the payment of interim dividends but sometimes if the circumstances are suitable a provision is inserted in the special Act of a company for this purpose. The following is an example of such a clause:—"The directors may in any "year without calling a meeting of shareholders for the "purpose declare an interim half-yearly dividend out of "the then ascertained profits of the company. Provided "that the amount of any interim half-yearly dividend so "declared shall not exceed in any one half-year one-half "of the amount of the maximum dividend."

#### *Accounts and Audit.*

##### *(1) Parliamentary Companies Generally.*

The keeping and auditing of the company's accounts—a further matter of special interest to this audience—is provided for in some detail in the Companies Clauses Consolidation Act 1845 and I think I had better give you at length some of the sections dealing with the subject. Section 91 provides among other things that the choice of auditors and the determination as to the remuneration of the auditors shall be exercised only at a general meeting of the company.

Sections 101 to 108, under the general heading of appointment and duties of auditors, read as follows:—

101. Except where by the special Act auditors shall be directed to be appointed otherwise than by the company the company shall at the first ordinary meeting after the passing of the special Act elect the prescribed number of auditors (*meaning the number prescribed in the special Act*) and if no number is prescribed two auditors in like manner as is provided for the election of directors and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an

auditor to supply the place of the auditor then retiring from office according to the provision hereinafter contained and every auditor elected as hereinbefore provided being neither removed nor disqualified nor having resigned shall continue to be an auditor until another be elected in his stead.

102. Where no other qualification shall be prescribed by the special Act every auditor shall have at least one share in the undertaking and he shall not hold any office in the company nor be in any other manner interested in its concerns except as a shareholder.

103. One of such auditors (to be determined in the first instance by ballot between themselves unless they shall otherwise agree and afterwards by seniority) shall go out of office at the first ordinary meeting in each year but the auditor so going out shall be immediately re-eligible and after any such re-election shall with respect to the going out of office by rotation be deemed a new auditor.

104. If any vacancy take place among the auditors in the course of the current year then at any general meeting of the company the vacancy may if the company think fit be supplied by election of the shareholders.

105. The provision of this Act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply *mutatis mutandis* to any ordinary meeting at which an auditor ought to be appointed.

106. The directors shall deliver to such auditors the half-yearly or other periodical accounts and Balance Sheet fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

107. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and Balance Sheet required to be presented to the shareholders and to examine the same.

108. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper at the expense of the company and they shall either make a special report on the said accounts or simply confirm the same and such report or confirmation shall be read together with the report of the directors at the ordinary meeting.

With regard to the last section quoted I may add that in the case of *Steele v. Sutton Gas Co.* 12 Q.B.D. 68 where one of the auditors of a company had employed an accountant against the wish of his co-auditor and made a separate report on the accounts it was held that he was entitled to do so and to recover from the company the amount of the accountant's charges.

Special provisions as to appointment of auditors are in some cases inserted in the special Act. Thus it is not an unusual thing to find a provision that it shall not be

necessary for the auditors to hold shares or stock in the company. The number of auditors is sometimes prescribed in some such way as the following:—"The prescribed number of auditors shall be one unless the number be increased to two by an order of a general meeting," or the same with the addition of the words "Provided that if the company think fit a firm may be appointed auditors," or "The prescribed number of auditors shall be two or any greater number that may be ordered by resolution of a general meeting." And I am glad to be able to inform you that there are several cases in which clauses have been inserted authorising, and even requiring, the appointment of Chartered Accountants as auditors.

Sections 109 to 114 of the Companies Clauses Consolidation Act 1845 make provision with respect to the accountability of the officers of the company. By Section 109 it is provided that "before any person intrusted with the custody or control of moneys whether treasurer collector or other officer of the company shall enter upon his office the directors shall take sufficient security from him for the faithful execution of his office."

Section 110 reads as follows:—"Every officer employed by the company shall from time to time when required by the directors make out and deliver to them or to any person appointed by them for that purpose a true and perfect account in writing under his hand of all moneys received by him on behalf of the company and such account shall state how and to whom and for what purpose such moneys shall have been disposed of and together with such account such officer shall deliver the vouchers and receipts for such payments and every such officer shall pay to the directors or to any person appointed by them to receive the same all moneys which shall appear to be owing from him upon the balance of such accounts." Sections 111 to 114 provide summary remedies before the justices for dealing with any such officers who refuse to render accounts produce and deliver up vouchers and pay up balances due or who are believed upon good grounds to be intending to abscond.

Sections 115 to 119 of the same Act are grouped under the general heading of the keeping of accounts and the right of inspection thereof by the shareholders and they read as follows:—

115. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors and all persons employed by or under them and of the matters and things for which such sums of money shall have been received or disbursed and paid.

116. The books of the company shall be balanced at the prescribed periods and if no periods be prescribed fourteen days at least before each ordinary meeting and

forthwith on the books being so balanced an exact Balance Sheet shall be made up which shall exhibit a true statement of the capital stock credits and property of every description belonging to the company and the debts due by the company at the date of making such Balance Sheet and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year and previously to each ordinary meeting such Balance Sheet shall be examined by the directors or any three of their number and shall be signed by the chairman or deputy chairman of the directors.

117. The books so balanced together with such Balance Sheet as aforesaid shall for the prescribed periods and if no periods be prescribed for fourteen days previous to each ordinary meeting and for one month thereafter be open for the inspection of the shareholders at the principal office or place of business of the company but the shareholders shall not be entitled at any time except during the periods aforesaid to demand the inspection of such books unless in virtue of a written order signed by three of the directors.

118. The directors shall produce to the shareholders assembled at such ordinary meeting the said Balance Sheet applicable to the period immediately preceding such meeting together with the report of the auditors thereon as hereinbefore provided.

119. The directors shall appoint a bookkeeper to enter the accounts aforesaid in books to be provided for the purpose and every such bookkeeper shall permit any shareholder to inspect such books and to take copies or extracts therefrom at any reasonable time during the prescribed periods and if no periods be prescribed during one fortnight before and one month after every ordinary meeting and if he fail to permit any such shareholder to inspect such books or take copies or extracts therefrom during the periods aforesaid he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

I should mention here another section of the same Act which confers a right of inspecting account books. It is Section 55 which reads as follows:—"At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof with liberty to take extracts therefrom without fee or reward."

On the subject of accounts and audit, in addition to the sections of the Companies Clauses Consolidation Act 1845 above referred to certain provisions contained in other clauses Acts commonly incorporated in the special Acts of particular classes of companies, as well as provisions contained in the special Acts of some companies, require to be mentioned

#### (2) *Gas and Water Companies (1847 Acts).*

By Section 38 of the Gasworks Clauses Act 1847 and by Section 83 of the Waterworks Clauses Act 1847 provision is made for a yearly account in abstract to be prepared by every company to which either of those Acts applies with a statement of the balance of such account duly audited and certified by the chairman of the company and also by the auditors thereof if any, and for a copy of such account to be transmitted free of charge to the clerk of the peace for the county in which the works are situate on or before the 31st January in each year and to be kept by such clerk and to be open to inspection by all persons at all seasonable hours on payment of one shilling for each inspection.

#### (3) *Market Companies.*

In the case of a market company the provisions of Section 50 of the Markets and Fairs Clauses Act 1847 are substantially the same only that the account is to be for the year ending the 31st day of December or some other convenient day in each year.

#### (4) *Harbour, Dock, and Pier Companies.*

In the case of a harbour dock or pier company the provisions of Section 50 of the Harbours Docks and Piers Clauses Act 1847 are substantially the same as those of Section 50 of the Markets and Fairs Clauses Act except that the account is to be duly audited and certified by the clerk or secretary for the time being of the company, and Section 49 of the same Act provides that the company shall keep books of account in which shall be entered the several sums received by or payable to them for rates in respect of vessels the tonnage of each vessel for which such rates are received or payable the name of the master thereof the port to which such vessel belongs the place from which on each occasion such vessel arrived and the place to which on each occasion such vessel is bound and also the several sums received by or payable to them in respect of the goods landed from or taken on board every vessel within the limits of the harbour dock or pier.

#### (5) *Gas Companies (1871 Act).*

In the case of a gas company to which the Gasworks Clauses Act 1871 applies Section 35 of that Act requires the company to fill up and forward to the local authority of every district within the company's limits of supply on or before the 25th March in each year an annual statement of accounts made up to the 31st December then next preceding as near as may be in the form and containing the particulars specified in the Schedule B annexed to that Act, which schedule contains an elaborate set of forms of account for a gas undertaking. The section goes on to provide that the company shall keep copies of such annual statement at their office and sell the same to any applicant at a price not exceeding one shilling for each such copy

and that the Board of Trade with the consent of the company may alter the forms in the schedule for the purpose of adapting them to the circumstances of the undertaking or of better carrying into effect the objects of the section.

(6) *Electric Lighting Companies.*

In the case of electric lighting companies Section 9 of the Electric Lighting Act 1882, which is a general Act applying to all the companies except if and so far as its effect may be varied by special legislation relating to any particular company, requires that the company shall on or before the 25th day of March in every year fill up an annual statement of accounts of the undertaking made up to the 31st December then next preceding and that such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade and that the company shall keep copies of such annual statement at their office and sell the same to any applicant at a price not exceeding one shilling a copy. I dare say you are familiar with the form of account prescribed by the Board of Trade under the powers of this section.

In the case of companies to which the Electric Lighting (Clauses) Act 1899 applies Section 6 of the provisions contained in the schedule to that Act imposes the following obligations:—

(1) The annual statement of accounts of the undertaking before being published as provided by Section Nine of the Electric Lighting Act 1882 shall be examined and audited by such competent and impartial person as the Board of Trade appoint and the remuneration of the auditor shall be such as the Board of Trade direct and that remuneration and all expenses incurred by him in or about the execution of his duties to such an amount as the Board of Trade approve shall be paid by the company on demand and shall be recoverable summarily as a civil debt.

(2) The company shall give to the auditor his clerks and assistants access to such of the books and documents relating to the undertaking as are necessary for the purposes of the audit and shall when required furnish to him and them all vouchers and information requisite for that purpose and shall afford to him and them all facilities for the proper execution of his and their duty.

(3) The Board of Trade may make and vary regulations prescribing the times at and the mode in which the audit shall be made and conducted or otherwise for the purpose of giving effect to the provisions of this section.

(4) Any report made by the auditor or such portion thereof as the Board of Trade direct shall be appended to the annual statement of accounts and shall form part thereof for the purposes of the said Section Nine.

(7) *Railway Companies.*

In the case of railway companies Section 107 of the Railways Clauses Consolidation Act 1845 provides for an annual account in abstract to be prepared showing the total receipts and expenditure of all funds levied for the year ending 31st December or some other convenient day in each year under the several distinct heads of receipt and expenditure with a statement of the balance of such account duly audited and certified by the directors or some of them and by the auditors. The company are if required to transmit a copy of this account free of charge to the overseers of the poor of the several parishes through which the railway passes and also to the clerks of the peace of the counties through which the railway passes on or before the 31st January then next and such last-mentioned account is to be open to the inspection of the public at all seasonable hours on payment of one shilling for every such inspection.

In addition to this section there are provisions as to accounts in the Railway Companies Act 1867 and the Regulation of Railways Act 1868 both of which are general Acts applying to all railway companies and not requiring incorporation in any special Act. Section 30 of the Railway Companies Act 1867 reads as follows:—

“No dividend shall be declared by a company until the auditors have certified that the half-yearly accounts proposed to be issued contain a full and true statement of the financial condition of the company and that the dividend proposed to be declared on any shares is *bona fide* due thereon after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the auditors but if the directors differ from the judgment of the auditors with respect to the payment of any such expenses out of the revenue of the half-year such difference shall if the directors desire it be stated in the report to the shareholders and the company in general meeting may decide thereon subject to all the provisions of the law then existing and such decision shall for the purposes of the dividend be final and binding but if no such difference is stated or if no decision is given on any such difference the judgment of the auditors shall be final and binding and the auditors may examine the books of the company at all reasonable times and may call for such further accounts and such vouchers papers and information as they think fit and the directors and officers of the company shall produce and give the same as far as they can and the auditors may refuse to certify as aforesaid until they have received the same and the auditors may at any time add to their certificate or issue to the shareholders independently at the cost of the company any statement respecting the financial condition and prospects of the company which they think material for the information of the shareholders.”

Sections 3, 4, 5, 11 and 12 of the Regulation of Railways Act 1868 are as follows:—

Sec. 3. Every incorporated company seven days at least before each ordinary half-yearly meeting held after the 31st day of December 1868, shall prepare and print, according to the forms contained in the first schedule to this Act, a statement of accounts and Balance Sheet for the last preceding half-year, and the other statements and certificates required by the same schedule, and an estimate of the proposed expenditure out of capital for the next ensuing half-year, and such statement of accounts and Balance Sheet shall be the statement of accounts and Balance Sheet which are submitted to the auditors of the company.

Every company which makes default in complying with this section shall be liable to a penalty not exceeding £5 for every day during which such default continues. The Board of Trade, with the consent of a company, may alter the said forms as regards such company for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this section.

Sec. 4. Every statement of accounts, Balance Sheet, and estimate of expenditure, prepared as required by this Act, shall be signed by the chairman or deputy-chairman of the directors and by the accountant or other officer in charge of the accounts of the company, and shall be preserved at the company's principal office. A printed copy thereof shall be forwarded to the Board of Trade, and at all times after the date at which it is required to be printed be given, on application, to every person who holds any ordinary or preference share or stock in the company, or any mortgage, debenture or debenture stock of the company; and every such person may, at all reasonable times, without fee or charge, peruse the original in the possession of the company. Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding £50.

Sec. 5. If any statement, Balance Sheet, estimate or report which is required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable, on conviction thereof on indictment, to fine and imprisonment, or on summary conviction thereof, to a penalty not exceeding £50.

Sec. 11. Whenever, after the passing of this Act, Section 102 of "The Companies Clauses Consolidation Act, 1845," is incorporated in a certificate or special Act relating to a railway company, it shall be construed as if the words "where no qualification shall be prescribed "by the special Act every auditor shall have at least one "share in the undertaking," were omitted therefrom; and so much of every certificate and special Act relating to a

railway company, and in force at the passing of this Act, as incorporates that portion of the said section, and so much of any special Act relating to a railway company, and so in force, as contains a like provision is hereby repealed.

Sec. 12. With respect to the auditors of the company the following provisions shall have effect:—

(1) The Board of Trade may, upon application made in pursuance of a resolution passed at a meeting of the directors or at a general meeting of the company, appoint an auditor in addition to the auditors of such company, and it shall not be necessary for any such auditor to be a shareholder in the company.

(2) The company shall pay to such auditor appointed by the Board of Trade such reasonable remuneration as the Board of Trade may prescribe.

(3) The auditor so appointed shall have the same duties and powers as the auditors of the company and shall report to the company.

(4) Where, in consequence of such appointment of an auditor or otherwise, there are three or more auditors, the company may declare a dividend if the majority of such auditors certify in manner required by Section 30 of "The Railway Companies Act, 1867" and "The Railway Companies Act (Scotland), 1867," respectively.

(5) Where there is a difference of opinion among such auditors, the auditor who so differs shall issue to the shareholders, at the cost of the company, such statement respecting the grounds on which he differs from his colleagues, and respecting the financial condition and prospects of the company, as he thinks material for the information of the shareholders.

Other sections of the same Act provide for appointment, in case of need, by the Board of Trade or by an extraordinary meeting of the railway company of inspectors with large powers of investigating the books and accounts and affairs of the company and of examining the officers of the company.

Under the Regulation of Railways Act 1871 and the Railway Regulation Act 1873 provision is made for the rendering of certain statistical accounts and returns by railway companies to the Board of Trade.

#### (8) *Special Companies.*

As an example of a special provision as to accounts enacted for the purpose of application to a particular company I may mention Section 64 of the South Staffordshire Mond Gas (Power and Heating Company's) Act 1901, an Act to which I have already made some reference. Section 64 of that Act reads as follows:—

(1) The company shall keep full true and plain accounts of their receipts and expenditure in respect of the undertaking prepared in a form approved by the Board of Trade and shall at least once in every year

cause to be prepared a true Balance Sheet prepared in a form approved by the Board of Trade showing the capital assets property and liabilities of the company and the said accounts and Balance Sheet shall in or within one month before each ordinary meeting be examined and audited in such manner and subject to such regulations as the Board of Trade may prescribe and shall be presented together with the report or certificate of the auditor to such ordinary meeting.

(2) A copy of the accounts and Balance Sheet for each financial year together with the report or certificate of the auditor shall within three months after the expiration of such year be forwarded by the company to the council of each borough and of each urban or rural district wholly or partly situate within the district and any such council shall be entitled to make a representation with respect to such accounts or Balance Sheet to the Board of Trade and the Board may thereupon require the company to make such alterations therein as they may deem necessary for the rectification thereof. The company shall keep copies of such accounts and Balance Sheet at their office and sell the same to any applicant at a price not exceeding one shilling for each copy. If the company make default in complying with the provisions of this sub-section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

#### *Management of Company.*

Time does not permit me to deal with the statutory regulation of the management of a parliamentary company beyond mentioning a few matters which you may find it useful to keep in mind.

#### *Qualification and Disqualification of Directors.*

First as regards the qualification of the directors, Sections 85 to 87 of the Companies Clauses Consolidation Act 1845 provide as follows:—

85. No person shall be capable of being a director unless he be a shareholder nor unless he be possessed of the prescribed number of shares and no person holding an office or place of trust or profit under the company or interested in any contract with the company shall be capable of being a director and no director shall be capable of accepting any other office or place of trust or profit under the company or of being interested in any contract with the company during the time he shall be a director.

86. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company or be either directly or indirectly concerned in any contract with the company or participate in any manner in the profits of any work to be done for the company or if such director at any time cease to be a holder of the prescribed number

of shares in the company then in any of the cases aforesaid the office of such director shall become vacant and thenceforth he shall cease from voting or acting as a director.

87. Provided always that no person being a shareholder or member of any incorporated joint stock company shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special Act but no such director being a shareholder or member of such joint stock company shall vote on any question as to any contract with such joint stock company.

It is the prevailing practice for the special Act to prescribe that each director shall possess in his own right a certain number of shares, the number varying according to the circumstances of the case. Sometimes it is provided in the special Act that a director shall not be disqualified by being interested in contracts with the company, or in certain specified classes of contract, but that he shall not vote on any question with regard to any such contract.

#### *Liability for Qualification Shares.*

It is to be observed that when a parliamentary company is first incorporated its special Act commonly prescribes who shall be the first directors or some of the first directors and this statutory appointment has been held, under some circumstances, to impose upon a person so named a statutory liability for the amount of the qualification shares although the company never engaged in active business and no meeting of directors was ever held and he received no allotment of shares and was not registered as a shareholder.

#### *Remuneration of Directors and other matters to be determined by General Meeting.*

The remuneration of the directors is to be fixed by a general meeting of the company under Section 91 of the Companies Clauses Consolidation Act 1845 which says:—  
“Except as otherwise provided by the special Act the following powers of the company (that is to say) the choice and removal of the directors except as hereinbefore mentioned and the increasing or reducing of their number where authorised by the special Act the choice of auditors the determination as to the remuneration of the directors auditors treasurer and secretary the determination as to the amount of money to be borrowed on mortgage the determination as to the augmentation of capital and the declaration of dividends shall be exercised only at a general meeting of the company.”

#### *Powers of Directors.*

Subject to the provisions of the section last quoted and of the special Act the directors are under the 1845 Clauses Act invested with the general management and super-

intendence of the affairs of the company and authorised to exercise its powers, the exercise of such powers being however declared to be subject to the control and regulation of any general meeting specially convened for the purpose but not so as to render invalid any Act done by the directors prior to any resolution passed by such general meeting.

*Registers, Transfers, Share Certificates, Inspection of Books, &c.*

Under the Companies Clauses Acts obligations are imposed upon the company with respect to the keeping of certain registers and the opening thereof for inspection and the form and issue of certain documents relating to shares and loans. First as to the Register of Shareholders. Section 9 of the 1845 Act provides as follows:—"The company shall keep a book to be called the Register of Shareholders and in such book shall be fairly and distinctly entered from time to time the names of the several corporations and the names and additions of the several persons entitled to shares in the company together with the number of shares to which such shareholders shall be respectively entitled distinguishing each share by its number and the amount of the subscriptions paid on such shares and the surnames or corporate names of the said shareholders shall be placed in alphabetical order and such book shall be authenticated by the common seal of the company being affixed thereto and such authentication shall take place at the first ordinary meeting or at the next subsequent meeting of the company and so from time to time at each ordinary meeting of the company."

This register must be distinguished from the Shareholders' Address Book, as to which Section 10 provides as follows:—

"In addition to the said Register of Shareholders the company shall provide a book to be called the Shareholders' Address Book in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company being corporations and the surnames of the several other shareholders with their respective Christian names places of abode and descriptions so far as the same shall be known to the company and every shareholder or if such shareholder be a corporation the clerk or agent of such corporation may at all convenient times peruse such book gratis and may require a copy thereof or of any part thereof and for every hundred words so required to be copied the company may demand a sum not exceeding sixpence."

Sections 11 to 13 provide for the issue of share certificates which are to be *prima facie* evidence of the title of the shareholders their executors administrators successors or assigns to the shares therein specified. The company may for every certificate when first issued and for every

certificate issued in substitution for one worn out damaged lost or destroyed demand any sum not exceeding the amount prescribed in the special Act or if no amount be prescribed then a sum not exceeding two shillings and sixpence.

Section 14 provides for shares being sold and transferred, the transfer being by deed duly stamped and truly stating the consideration. A form of transfer is set out in a schedule to the Act and the deed may be in that form or to the like effect.

As to the Register of Transfers Section 15 provides as follows:—

"The said deed of transfer (when duly executed) shall be delivered to the secretary and be kept by him and the secretary shall enter a memorial thereof in a book to be called the Register of Transfers and shall endorse such entry on the deed of transfer and shall on demand deliver a new certificate to the purchaser and for every such entry together with such endorsement and certificate the company may demand any sum not exceeding the prescribed amount or if no amount be prescribed then a sum not exceeding two shillings and sixpence and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share instead of a new certificate being granted and such endorsement being signed by the secretary shall be considered in every respect the same as a new certificate and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking or to vote in respect of such share."

Section 16 provides that "no shareholder shall be entitled to transfer any share after any call shall have been made in respect thereof until he shall have paid such call nor until he shall have paid all calls for the time being due on every share held by him."

Under Sections 18 and 19 in the event of the transmission of a share to representatives of a shareholder otherwise than by transfer a declaration in writing authenticating such transmission has to be made and left with the secretary who is thereupon to enter the name of the person entitled under such transmission in the Register of Shareholders and for every such entry the company may demand any sum not exceeding the prescribed amount and where no amount is prescribed then not exceeding five shillings and until such transmission has been so authenticated no person claiming by virtue of any such transmission is to be entitled to receive any share of the profits of the undertaking or to vote in respect of any such share as the holder thereof.

Section 20 provides that the company shall not be bound to see to the execution of trusts to which the shares may be

subject and directs that the receipt of the party in whose name any share stands in the books of the company or if it stands in the names of more parties than one the receipt of one of the parties named in the Register of Shareholders shall be a sufficient discharge to the company for any dividend or other sum of money payable in respect of any such share notwithstanding any trusts to which such share may be subject and whether or not the company have had notice of such trusts.

Under Section 36 the Register of Shareholders may be inspected without fee by any judgment creditor who has issued execution against the property or effects of the company and has not been able to find sufficient whereon to levy such execution. Such a creditor is under this section entitled with leave of the Court to issue execution against any of the shareholders to the extent of their shares in the capital of the company not then paid up.

As to the Register of Mortgages and Bonds Section 45 provides as follows:—"A Register of Mortgages and Bonds shall be kept by the secretary and within fourteen days after the date of any such mortgage or bond an entry or memorial specifying the number and date of such mortgage or bond and the sums secured thereby and the names of the parties thereto with their proper additions shall be made in such register and such register may be perused at all reasonable times by any of the shareholders or by any mortgagee or bond creditor of the company or by any person interested in any such mortgage or bond without fee or reward."

Section 46 provides for the transfer of mortgages and bonds which is to be by deed duly stamped and truly stating the consideration. A form of transfer is set out in a schedule to the Act and the transfer may be according to that form or to the like effect.

As to registration of transfers of mortgages and bonds Section 47 provides as follows:—"Within thirty days after the date of every such transfer if executed within the United Kingdom or otherwise within thirty days after the arrival thereof in the United Kingdom it shall be produced to the secretary and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects and no party having made such transfer shall have power to make void release or discharge the mortgage or bond so transferred or any money thereby secured and for such entry the company may demand a sum not exceeding the prescribed sum or where no sum shall be prescribed the sum of two shillings and sixpence and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage."

Section 49 provides that the interest on any such mortgage

or bond shall not be transferable except by deed duly stamped.

Section 62 provides that where shares in the company have been converted or consolidated into stock the several holders of such stock may transfer their respective interests therein or any parts of such interests in the same manner and subject to the same regulations and provisions as in the case of shares, and directs that the company shall cause an entry to be made in some book to be kept for that purpose of every such transfer and that for every such entry they may demand any sum not exceeding the prescribed amount or if no amount be prescribed a sum not exceeding two shillings and sixpence.

As to the register of stock Section 63 provides as follows:—"The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid with the amount of the interest therein possessed by them respectively to be entered in a book to be kept for the purpose and to be called the Register of Holders of Consolidated Stock and such book shall be accessible at all reasonable times to the several holders of shares or stock in the undertaking."

As to the register and certificates of debenture stock the Companies Clauses Act 1863 provides as follows:—

Sec. 28. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock with the respective amounts of the stock to which they are respectively entitled and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee bondholder debenture stockholder shareholder and stockholder of the company without the payment of any fee or charge.

Sec. 29. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply *mutatis mutandis* to certificates of debenture stock.

#### *Minute Book.*

There is one other book of importance to an auditor which I must mention as being the subject of statutory regulation, namely the Minute Book, as to which Section 98 of the Companies Clauses Consolidation Act 1845 provides as follows:—

"The directors shall cause notes minutes or copies as the case may require of all appointments made or contracts entered into by the directors and of the orders and proceedings of all meetings of the company and of the directors and committees of directors to be duly entered in books to be from time to time provided for the purpose which sh



"be kept under the superintendence of the directors and  
 "every such entry shall be signed by the chairman of such  
 "meeting and such entry so signed shall be received as  
 "evidence in all Courts and before all judges justices and  
 "others without proof of such respective meetings having  
 "been duly convened or held or of the persons making or  
 "entering such orders or proceedings being shareholders or  
 "directors or members of committee respectively or of the  
 "signature of the chairman or of the fact of his having been  
 "chairman all of which last-mentioned matters shall be  
 "presumed until the contrary be proved."

#### *Quorum for General Meeting.*

As regards the holding of general meetings of the company it is to be noticed that unless the special Act makes a different provision (as is sometimes done) a quorum is required which it is not always very easy to secure.

The matter is regulated by Section 72 of the 1845 Act which says: "In order to constitute a meeting (whether  
 "ordinary or extraordinary) there shall be present either  
 "personally or by proxy the prescribed quorum and if no  
 "quorum be prescribed then shareholders holding in the  
 "aggregate not less than one twentieth of the capital of the  
 "company and being in number not less than one for every  
 "five hundred pounds of such required proportion of capital  
 "unless such number would be more than twenty in which  
 "case twenty shareholders holding not less than one  
 "twentieth of the capital of the company shall be the quorum  
 "and if within one hour from the time appointed for such  
 "meeting the said quorum be not present no business shall  
 "be transacted at the meeting other than the declaring of a  
 "dividend in case that shall be one of the objects of the  
 "meeting but such meeting shall except in the case of a  
 "meeting for the election of directors hereinafter mentioned  
 "be held to be adjourned *sine die*."

#### *Voting at General Meeting.*

The voting of the shareholders, if no scale is prescribed in the company's special Act, is regulated by Section 75 of the 1845 Act under which every shareholder has one vote for every share up to ten and an additional vote for every five shares beyond the first ten shares held by him up to one hundred and an additional vote for every ten shares held by him beyond the first hundred shares but no shareholder is entitled to vote at any meeting unless he has paid all the calls then due upon the shares held by him. The same Act makes provision as to voting by proxy, the declaration of the carrying of resolutions, the demanding of polls, and other matters connected with the conduct of general meetings.

#### *Proof in Bankruptcy.*

I may perhaps mention here that Section 140 of the Companies Clauses Consolidation Act 1845 gives a convenient power, in case of the bankruptcy or insolvency of a person indebted to the company, for the secretary or

treasurer of the company to represent the company and act on its behalf in the bankruptcy or insolvency proceedings as if the debt were owing to such secretary or treasurer.

#### *Access to Special Act.*

Section 161 of the same Act contains a very necessary provision for the keeping at the principal office of the company, and also, in certain cases, for the depositing at the offices of clerks of the peace and town clerks in the neighbourhood of the company's works, of copies of the special Act of the company and for the inspection thereof and taking of copies therefrom by parties interested.

I must apologise for thus wearying you with extracts from Acts of Parliament but there is no royal road to the understanding of the constitution of a parliamentary company, and the dull work of studying the various enactments must be undertaken.

#### *The "Undertaking" of a Parliamentary Company, Sale of Business, Winding-up, &c.*

Now I want, before concluding, to say a few words with regard to the nature of the going business concern or the "undertaking," as it is called, of a parliamentary company. When Parliament gives special powers and privileges to a company or other body of undertakers for the carrying on of a concern it is usually for the public convenience and advantage that the concern is established as well as for the pecuniary benefit of the shareholders, and the privileges are usually accompanied by various duties and obligations which the undertakers are bound to discharge for the public benefit. Moreover the nature of the concern is usually such that unless it is carried on regularly, efficiently, and with adequate means and resources, it may become a source of irritation to the public if not an absolute nuisance. It is therefore desirable in the public interest to ensure that the parties responsible for the management shall be suitable for the work. Following out this view the Courts, in dealing with the special Acts of companies of this kind, have held that Parliament, when granting the statutory powers, must be taken to have intended to grant them only to the particular company or body named in the special Act for the purpose, and thus has arisen the legal doctrine that a parliamentary company formed to carry on an undertaking of a public nature cannot sell assign transfer lease or otherwise dispose of or part with its undertaking without express authority to that effect in the Act or Acts by which it is governed. Of course this principle ceases to apply if and so far as either in any general legislation relating to undertakings of the class carried on by the company or in the special Act of the company or the Clauses Acts incorporated therewith a power of sale can be found. As an instance of a power of sale in a Clauses Act I may mention Section 44 of the Tramways Act 1870 which enables a company, when the tramways have

been open for traffic for six months, to sell the undertaking with the consent of the Board of Trade.

You are probably aware that under Section 199 of the Companies Act 1862 there is jurisdiction for the Court to make an order for the compulsory winding-up of a company with more than seven members incorporated by special Act other than a railway company. It is doubtful whether in such a winding-up the powers of the liquidator or the Court extend to the selling of an undertaking which the company could not itself have sold, and if any one of you should find himself in the happy position of being appointed liquidator of such a company he may discover that he has under his control an undertaking which he cannot transfer without obtaining special statutory power for the purpose, and if in the course of the winding-up he has an opportunity of negotiating a sale of the going concern, he may have to adopt the plan of first entering into a provisional agreement for sale subject to confirmation by Parliament and then promoting a private Bill in Parliament to authorise the completion of the transaction.

As a result of this doctrine of non-transferability it was held in the case of *Blaker v. Herts and Essex Waterworks Co.* (41 Ch.D. 399) that where in an action by debenture-holders a receiver was appointed in respect of a water supply undertaking carried on by a parliamentary company which had issued the debentures no sale of the undertaking could be ordered nor ought the receiver to be appointed as manager of the business since the only persons intended by Parliament to manage and carry on the undertaking were the directors of the company.

It should be noticed however that this doctrine of non-assignability does not extend to separate property, such for example as surplus land of a railway company, which is not in any way part of or required for the purposes of carrying on the public undertaking authorised by Parliament.

It is of course quite a common thing for a sale of the undertaking or part of the property of a parliamentary company to take place under express powers conferred for that purpose—such for example as the sale to a municipal corporation of the business of a water or gas company. As the services of accountants are frequently requisitioned in connection with such sales I will briefly refer to the basis on which they are effected. Where the purchase price is not agreed between the two parties to the sale the ordinary parliamentary practice is to provide that it shall be ascertained by arbitration. At such an arbitration, if the subject-matter of the sale is a going business concern or undertaking and not merely particular works or other property, the ordinary practice is to ascertain the price by capitalising at so many years' purchase the maintainable revenue derived from the business, the number of years' purchase being perhaps twenty, twenty-five, or thirty or such other number as is found reasonable having regard to the character of the

business and the degree of security which the concern shows for permanently yielding the revenue. This branch of the subject however I have already dealt with at greater length in a lecture on the Law of Compensation which I gave before this Society in the year 1902 and so I will not follow it up further on the present occasion.

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### Personal.

MESSRS. STEWART BLACKER QUIN & Co., Chartered Accountants, have removed from 1 Lombard Street to 16 Donegall Square South, Belfast.

THE partnership hitherto existing between Messrs. RICHARD IBBOTSON and WILLIAM PORTER, Chartered Accountants, under the style of JNO. IBBOTSON & Co., has been dissolved by mutual consent. The business will in future be carried on at 3 King Street, Blackburn, by WILLIAM PORTER and RICHARD R. PORTER (his son) under the style of WM. PORTER & SON.

MESSRS. SAMUEL SMYTH & Co., Chartered Accountants, beg to intimate that they have removed to offices in the Scottish Temperance Buildings, Belfast.

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### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, May 4th, was 162, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 85; Deeds of Arrangement registered, 77. The respective numbers in the corresponding week of last year were: Bankruptcies, 85; Deeds of Arrangement, 62—total, 147; being an increase of 15. The total number of commercial failures recorded during the 18 weeks of the present year is 2,992; the total number recorded in the corresponding 18 weeks of last year was 3,255, showing a decrease of 263.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, May 4th, was 156. The number in the corresponding week of last year was 177, showing a decrease of 21. The total number filed during the 18 weeks of the present year is 2,757; the total number filed in the corresponding 18 weeks of last year was 3,070, showing a decrease of 313.

---

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week

ending Friday, May 4th, amounted to £939,332, by way of addition to £1,426,232, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,492,999 showing a decrease of £553,667. The total amount registered during the 18 weeks of the present year was £29,391,865 (in addition to the issues in previous years by the same companies), as compared with £28,075,374 for the corresponding 18 weeks in 1905, showing an increase of £1,316,491.

## The Profession in Scotland.

### Scottish General Examining Board.

THE General Examining Board of the Chartered Accountants of Scotland intimate that the next series of examinations will be conducted at Edinburgh, Glasgow, Aberdeen, and such other places as may be found necessary, on the following dates:—

Preliminary Examination—Saturday, 2nd June 1906.

Intermediate Examination—Tuesday 5th, and Thursday 7th June 1906.

Final Examination—Monday 4th, Tuesday 5th, Thursday 7th, and Friday 8th June 1906.

Intending candidates are required to give in their full names and addresses, and make payment of the requisite examination fees to the Secretary of the Society with which they are connected, or to the Secretary and Treasurer, Mr. Richard Brown, 23 St. Andrew Square, Edinburgh, not later than 15th inst.

### Institute of Accountants and Actuaries in Glasgow.

At the quarterly meeting of the Institute (incorporated by Royal Charter), held in the Hall, 218 St. Vincent Street—Mr. John Mann, Senr., President, in the chair—the following candidates, having passed all the prescribed examinations, and been found duly qualified, were admitted as members, subject to the bye-laws, rules, and regulations:—Angus M'Coll Parker, Westwood Farm, Fergus, Ontario; Walter Wilson Rathie, with Messrs. Brown, Fleming & Murray, C.A.

### Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	3½%
" 21st "	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	2½%
Sept. 7th "	..	..	..	..	..	3%
" 28th "	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	3½%
May 4th "	..	..	..	..	..	4%

## Ovid, A.C.A.

[MATRIMONY.—Chartered Accountant in London (28), income £360, would correspond with attractive Lady, possessing small means preferred; strictly genuine.—*Daily Paper.*]

Passing fair was this gay A.C.A.,  
His income a sovereign a day;  
He yearned and he sighed for the turn of the tide,  
For the business that came not his way.  
He tried every channel in turn,  
An extra five hundred to earn;  
He whispered some prayers as they kicked him  
downstairs,  
He was young and had much yet to learn.  
At last he grew tired of the game,  
For the ending was always the same,  
So he thought he'd adopt Ovid's plan and co-opt  
With a suitably handsome young dame.  
Sing hey, for the *en commandite*!  
As a partner she may be so sweet!  
But don't let us hurry—there's *Garner v. Murray*,  
And her fortune may be *too petite*.

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SATURDAY, MAY 19, 1906.

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Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

#### The Income Tax Committee.

COMPARATIVELY little interest seems to have been aroused by the announcement made by the Chancellor of the Exchequer, in the course of his Budget speech, that it was the intention of the Government to appoint a Committee to examine into the working of the income-tax regulations, with a special view to seeing whether the introduction of a

differentiated or graduated tax were possible. The truth of the matter is, we suppose, that so much has been heard upon this subject in the past, and so many previous inquiries have been undertaken, that the average income-tax payer becomes somewhat sceptical of anything but an increase in the existing rate resulting from such an inquiry. Committees were appointed to examine into the subject of Income-tax in 1851 and in 1861, neither of which accomplished anything very noteworthy. Even so early as 1842 the desirability of distinguishing between earned and spontaneous income was raised by Lord BROUGHAM, but the matter was shelved on the ground (sound enough at the time, but now hopelessly obsolete) that the whole tax being a purely temporary expedient, the inquiry was uncalled for. In 1888 the question was again raised in Parliament, and appears to have been viewed with at all events some measure of favour by the then Government. It was again debated in 1891; and, as our readers will remember, it is, so to speak, only the other day that a Departmental Committee reported the result of its inquiries into the existing methods of assessment and collection.

There is, doubtless, a very general consensus of opinion in favour of some form of differentiated and graduated income-tax, the justice of which is admitted in principle; but among those who have seriously studied the subject, the difficulties of devising any scheme that would work fairly in practice without incurring enormous inconvenience upon both taxpayer and revenue officials have proved well nigh insuperable. Without wishing to discount the result of the present Committee's inquiry, we may hazard the statement that nothing approaching a theoretically complete scheme

could possibly be designed which would not cost for collection far more than any additional income that could in reason be expected in consequence.

It seems to us that the only possible opening lies in the direction of a limited and admittedly imperfect application of the principle which may yet be found sufficiently comprehensive to avoid any substantial injustice, and sufficiently simple to avoid any material increase in the existing costs of collection. For that purpose it seems to us that a distinct step in the right direction would be to enact higher rates for income-tax levied under Schedules A and C—which in all cases represent spontaneous income—to those levied under Schedules B, D, and E. Schedule B already has a rate of its own, and there would therefore be nothing very revolutionary in applying such a differentiation to the other schedules. Where an injustice might arise would be in that many incomes at present assessed under Schedule D are just as spontaneous as those under Schedules A or C. Such incomes are however, we think, substantially exhausted under the heading of dividends and other annual payments made by limited and other incorporated companies, and it would not be at all a difficult matter to charge such companies with a sur-tax or dividend tax, thus placing them approximately upon the same level as the other spontaneous incomes already provided for. The question might well arise, however, with regard to the tax deducted from annual payments by individuals, as for instance upon the interest paid by a private borrower to a mortgagee. It would, no doubt, be inconsistent to let the mortgagee in such cases off with a lighter tax than if he had lent his money to an incorporated company or invested it in public

funds, but, on the other hand, the danger of allowing the borrower to deduct a special sur-tax would be that as likely as not he would not account for it to the Inland Revenue. Upon the whole, therefore, we should prefer to deliberately give such mortgagees the advantage in question for what it is worth, recognising that under any conceivable system there must always be certain inconsistencies and anomalies. These, however, in their turn might be, at all events roughly, corrected by requiring mortgage deeds and all similar documents to be periodically restamped with an *ad valorem* duty equivalent to the sur-tax not levied in their case.

The question of a graduated income-tax raises, however, greater difficulties, partly on account of the fact that few persons enjoying more than quite a small income derive it all from any one source; but apart from the practical difficulties involved there is, of course, the question of principle—that the whole idea of a graduated income-tax is that those in receipt of larger incomes can afford to contribute at a higher rate to the expenses of the State than those in receipt of smaller incomes. This as a general proposition might be accurate enough if applied to individuals, but when applied—as it must of necessity be under existing circumstances—to heads of households, the question of their respective responsibilities must be considered before it is possible to arrive, even approximately, at the figure each can afford to pay; and from that point of view the present system of abatements is not only imperfect, but in many cases actually defeats its intended object. Thus it is easy to conceive that one man earning (say) £300 per annum is considerably better off than another earning £600, whereas the latter would pay

about four times as much income-tax as the former. If any serious attempt be made to deal with the subject of graduated income-tax upon equitable lines, it is necessary that regard should be had not merely to the total amount of income enjoyed by the household, but also to the number of persons of which that household consists.

For our own part, we do not feel very hopeful that the efforts of this Income Tax Committee will be crowned with any greater measure of success than those of its somewhat numerous predecessors, but it will at least be interesting to see what progress has been made in ideas upon the subject since the matter was last seriously discussed in Parliament.

---

### Bankruptcy Law Amendment.

---

IN view of the recent appointment of a Departmental Committee to consider the proposed revision of the Bankruptcy Acts, the Committee of the Birmingham Jewellers' and Silversmiths' Association has requested its solicitor to draw up a report on the subject for submission to the Board of Trade.

This report is now being drawn up, and *inter alia* recommends that the following offences should be punishable by imprisonment:—

- (1) Failure to keep proper books disclosing the position of the bankrupt for six years prior to the bankruptcy.
- (2) Failure to keep proper records of betting transactions during the period for which the books showed the debtor to have been insolvent.
- (3) For losses occasioned by betting while insolvent.

- (4) For pawning transactions entered into while insolvent and within six years of the bankruptcy.

Some of these recommendations may wear a slightly different complexion when the full report is studied, but it seems to us that, as they stand, they are somewhat unduly harsh. So long as no unreasonable standard is set up it would be impossible to find any fault with Clause 1, but Clauses 2 and 3—which, after all, relate to practically the same offence—are in the nature of things very largely a question of degree, both as to the amount involved and as to what is really meant by the term “betting.” For instance, the Manchester man who does not cover his contracts by operations in “futures” is the one who is betting against the future, whereas the man who enters into such dealings, although to the uninitiated it may appear to be speculating or betting, is in reality adopting a method of insurance against contingencies. But, of course, this lenient view of the matter can only be taken so long as the transactions in “futures” are justified by the nature and magnitude of the *bonâ fide* trading operations. With regard to Clause 4, the existing law with regard to illegal pawning might with advantage be made more stringent, but a six years’ limit seems somewhat excessive, and clearly ought not to apply unless the debtor has known himself to be insolvent, or ought to have known himself to be insolvent, during the whole of that period.

The report goes on to suggest that the Registrar presiding at a public examination should have power to commit a debtor to prison for contempt, and to impose a term of imprisonment for any of the four offences enumerated above. We very much question whether it would be at all desirable to grant

such powers to a Registrar, nor can we see any serious objection to the existing practice under which the Registrar reports to the Judge and the Judge makes such order as he may think fit. In some cases, of course, this enables a contumacious debtor to cause trouble and delay, but the inconvenience so occasioned is, it seems to us, as nothing to the arbitrary power of committal in the hands of so subordinate an official as a County Court Registrar adjudicating upon the spur of the moment upon matters which have, perhaps, not been very fully investigated, and where, perhaps, the debtor has had no opportunity of being adequately defended. The recommendation that the presiding Registrar should have power to commit a debtor for trial in respect of all offences under the Debtors Act would, viewed superficially, appear to be far more reasonable, but in practice it would probably work out as badly as the existing power of a County Court Judge to commit a witness for trial for perjury. In the absence of sworn depositions no conviction is likely to follow such committals, more especially when it is borne in mind that the chief trouble at the present time is to get the jury to convict for an offence under the Debtors Act. It is recommended that the period to which the Debtors Act applies as to concealment or removal of property, falsification or destruction of books or documents, fictitious losses, and pawning or pledging of property should be extended, and that the controlling words “unless the jury is satisfied that he had no intent to defraud,” be deleted. These alterations might doubtless produce a desirable effect, but, before that can be seriously expected, it is important that sufficient publicity should be given to the whole matter to introduce a sounder and more reason-

able public opinion on the whole subject of fraudulent insolvency. It seems to us that if the matter is to be gone into seriously upon these lines, creditors who encourage an insolvent to obtain credit from others in order that he may be able to pay them, should be expressly made liable for conspiracy. Such an alteration of the law with regard to fraudulent bankruptcy would probably be anything but popular among a large number of business men, but in the long run it would probably bring about a more healthy tone in business transactions. As matters stand, the view frequently taken by juries in such cases is that but for pressure put upon the debtor by creditors who had a knowledge of his position, he would never have resorted to the devious ways which ultimately brought him to the dock; and if, under such circumstances, juries decline to convict on the ground that they have the wrong persons before them, there is little ground for surprise, and perhaps not very much occasion for regret.

The last recommendation in the report is that every bankrupt should be compelled to apply for his discharge within a certain period after the commencement of his bankruptcy, and that failure to do so should render him liable to imprisonment. It will doubtless be objected that this puts the unfortunate insolvent upon a level with the ticket-of-leave man, but for our own part we do not attach any serious importance to that objection. On the other hand, we do not see any very useful purpose that could be served by compelling a bankrupt to apply for his discharge unless it has been determined what is to be done with him when the application is heard. The number of **undischarged** bankrupts, which is steadily

increasing yearly, is a standing menace to all legitimate business, but we do not see how the proposal referred to is going to mend the matter. If anything useful is to be accomplished in the direction indicated, it seems to us that every undischarged bankrupt should be required to submit himself for examination once in each year, so that the Court might have an opportunity of ascertaining his present occupation and means, and his capacity for making some contribution towards the payment of his creditors. Were that course to be pursued the number of cases in which offers of composition would be forthcoming would, we think, be very largely increased; and a term would be put upon the existing scandal of undischarged bankrupts going about their business without let or hindrance, living obviously in a far better position than many of their unfortunate creditors. If any really effective reform of the present position is to be attempted, it must, it seems to us, go to the root of the whole foundation of our existing bankruptcy laws, viz., that a bankrupt upon surrendering the whole of his property at the date of his bankruptcy is entitled to a release from his debts, and, save in extremely exceptional cases, may thereafter apply to his own uses all his subsequent earnings. This fundamental principle has from time to time been modified—but chiefly upon paper, and, as it seems to us, never very effectively—and we think the time has now arrived when it should be clearly declared that bankruptcy will *not* operate to form this convenient process of slate-washing for the benefit of unscrupulous debtors. It is necessary, of course, that undischarged bankrupts should have some rights of property, or there would be an end once for all of any attempt upon



their part at rehabilitation. But the acknowledgment of this principle by no means necessarily involves its being carried to ridiculous extremes; and it seems to us that hitherto—partly through defective machinery, partly through a lack of conscience on the part of debtors, and partly through the supineness of bankruptcy officials—the practical position at the present time is that the moment an adjudication order has been made the debtor is free to do what he likes so long as he has the sense to take proper legal advice as to the best means of so tying his assets up as they accumulate that they cannot be diverted for the purpose of paying his just debts.

These defects notwithstanding, the report prepared for the Birmingham Jewellers' and Silversmiths' Association is certainly suggestive in one or two respects, and it at least indicates the interest that is being taken in the subject by business men generally. We trust that other trade societies will also consider the subject and publish their findings, so that the matter may continue to be discussed, and the members of the Departmental Committee thus be made acquainted with the views of those in whose interests bankruptcy law ought to be primarily formulated.

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#### Liquidations and Receiverships.

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THE recent decision of Mr. Justice BUCKLEY in *In re Alfred Melson & Co., Lim.* (referred to in our Law Reports this week) raises a question of considerable importance, and shows that, without waiting for such action as the Legislature may take in consequence of the recommendations of the Departmental Committee appointed in

February 1905, the Courts are determined to do all that lies in their power to protect the *bonâ fide* unsecured creditor from injustices arising out of the enforcement of debenture-holders' rights. In this case it would appear that it was just and equitable in a legal and also in a business sense that the company should be wound up, for although there was no voluntary liquidation in progress, and although no receiver had been appointed for debenture-holders, the last-named were shown to be in substantial possession of the company, and to be carrying on its business. It seems reasonable to suppose that debenture-holders would not be in possession so long as there were ample assets to pay all creditors in full; and for obvious reasons it would be grossly unfair to unsecured creditors that they should be expected to go on supplying goods to the order of the company when at any moment the debenture-holders, by appointing a receiver, might crystallise their charge and apply all the assets they could then lay their hands upon in satisfaction of their claims. Given such a position of affairs, it is clear that so long as the real position of the company remained unknown the debenture-holders might induce that company to obtain upon credit sufficient goods to enable the debenture-holders to be repaid in full and then leave the unfortunate unsecured creditors to make the best of the empty carcass that they left behind. Such a question as this raises immense possibilities, and for our own part we should not care to accept all the possible liabilities that might be incurred by persons using the name and the machinery of a company registered with limited liability for such a purpose. But without troubling to go into these somewhat intricate side-issues, it is clearly both "just and equitable" that a company

carrying on business under such circumstances should be shut down ; and it is satisfactory to observe that the Court is no longer to be deterred from taking this eminently sound and businesslike view of the matter on the mere technicality that in any event there are not likely to be any assets available for distribution among the unsecured creditors, and that, therefore, the petitioner can have no substantial interest in the matter. It is quite conceivable that under certain circumstances a company which did not owe a single shilling to anyone might be ordered to be wound up by the Court ; and that being so, it is clear that the exact nature of the interest of the petitioner ought in all cases to be regarded as determining the whole matter either one way or the other.

Closely following upon this decision *re Alfred Melson & Co., Lim.*, came Mr. Justice BUCKLEY's order for the compulsory winding-up of *Godwin & Son, Lim.*, on the 8th inst. under circumstances entirely different, but which yet seem to confirm the impression derived from the earlier case that the Courts are more fully alive now than they were a few years since to the importance of considering the interests of unsecured creditors. In *Godwin's* case the company was already in voluntary liquidation, and a receiver and manager had been appointed by the Court in the debenture-holders' action who had taken possession of all the available assets of the company, and the debenture-holders had obtained judgment. *Primâ facie* one would have thought that this was a case when, if ever, it would have been held that there was nothing to be gained by making a winding-up order, in that the appointment of a receiver and manager by the Court was sufficient guarantee that all existing rights would be properly protected, while the fact that

the company was in voluntary liquidation would have provided all the necessary facilities for joining the company in any act or proceedings that might be necessary for the recovery of assets, if indeed such a course should be found necessary. This attitude seemed to be further strengthened by the circumstance that there appeared to be no likelihood of the assets realising sufficient to satisfy the debenture-holders' judgment and costs. The sole ground upon which, apparently, the petitioners were able to rely was an allegation that the issue of debentures was in itself an undue preference of a particular creditor, and that the amount due to such creditor was in fact less than the amount for which he had obtained judgment, but this was held (and, as we think, not improperly) to sufficiently justify the granting of the petition. *Godwin's* case thus appears to come under the general rule that where there are any circumstances connected with the formation or management of the company calling for further or independent inquiry, the Court will grant an order for the winding-up of that company for the purpose of enabling such an inquiry to be made. Such a procedure is, of course, unexceptionable, in that should it eventually transpire that there has been any irregularity it is clearly only right and proper that it should be set right. If, on the other hand, the investigations of the liquidator disclose no ground for setting aside the debenture-holders' judgment, then clearly no rights that ought to be respected would have been infringed.

But although it is thus easy to justify and explain the more recent attitude of the Courts towards such cases, it is interesting to observe that the present point of view did not by any means always obtain. There certainly was a

time when it would have been held that a debenture-holder having once obtained judgment, the liquidator of the company could have no better right to appeal against that judgment than the company itself would have had, and in the present case, inasmuch as the company appears to have consented to judgment, that right would have been *nil*.

Both cases are thus of considerable interest to practitioners, as showing that for practical purposes the power of changing the existing law does not by any means solely rest with the Legislature, and while all impartial business men will welcome the present change of attitude, some will not improbably be tempted to wonder why it has been so long delayed. There can be no possible objection to the legitimate rights of debenture-holders being duly protected; but, as an eminent lawyer once stated, all legal rights only exist for the purpose of being exercised equitably, and it is when debenture-holders' rights are inequitably exercised that the greatest injustice, and therefore the most bitter complaints, inevitably arise.

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### Weekly Notes.

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#### One-Man Companies.

The President of the Board of Trade was recently asked in the House of Commons whether, in view of the results in connection with what were known as "one-man companies," he would take into consideration the advisability of introducing legislation at an early date designed to stop or mitigate this abuse of the law relating to limited companies. In his reply, Mr. Lloyd-George stated that he expected shortly to receive the report of the Committee which was investigating the working of the Companies Acts, and when he received it he would be in a better position to answer the question.

#### Tax on Railway Tickets in Germany.

A Reuter's telegram announces that the Reichstag has adopted the Bill imposing a stamp duty on passengers' railway tickets, with various amendments submitted during the discussion of the measure. Tickets costing less than 60 pfennigs will be duty free, while on tickets costing upwards of 60 pfennigs a duty will be charged ranging from 5, 10, and 20 pfennigs to 2, 4, and 8 marks for 3rd, 2nd, and 1st class respectively. Each ticket will bear a stamp showing the amount of duty paid. The Chancellor of the Exchequer on the look out for new sources of revenue might bear this small note in mind.

#### £1 Notes.

Mr. E. Sykes, of the Institute of Bankers, read an interesting paper recently at a meeting of the Institute of Secretaries on the circulation of small notes. He advocated the well-known suggestion of strengthening the gold reserve of this country by the adoption of a system of £1 notes. It will be remembered that on two occasions the attempt has been made to carry this project into law during the last twenty-five years, but there is a rooted objection on the part of the public, and there are many inherent difficulties in the scheme itself which render its probable adoption most unlikely.

#### The Savings Bank Deficiency.

Our readers will have noted that the system of publishing a "Balance Sheet" has been discontinued by the Government, and we are rather sorry for this, for it would have been interesting to have seen how the deficiency of some ten millions with regard to the funds of the Post Office Savings Bank would have been shown. It has been suggested that a Sinking Fund of one million per annum would in ten years wipe this deficiency out, and would in time perhaps form a Reserve Fund for the Savings Bank. It is also said that if the sums so set aside were used to purchase gold in the open market it would be putting the savings banks of the country beyond reproach with regard to cash holdings, and at the same time it would be adding considerably to the national gold reserves. Secretaries of Students' Societies in search of a subject for debate might do worse than tackle this absorbing topic. We are very much surprised that no Chartered Accountant has yet ventured to furnish an amateur Budget. We feel sure that there must be many members of the profession who could advance some very practical ideas.

**European Savings Banks.** *Le Bulletin de Statistique et de Législation Comparée* gives some very interesting tables relating to individual thrift in the twelve leading countries of Europe, as illustrated by the reports of the Savings Banks. As reliable data of this character are not yet available for recent years, the compilers have not been able to take a later year than 1902. The total deposits in the savings banks of France, Great Britain, Prussia, Belgium, Holland, Austria, Hungary, Russia, Denmark, Norway, and Sweden amounted to 31,767 million francs at the end of 1902. Classed according to depositors Prussia heads the list with 8,409 million francs, then Germany with 5,330 million, Austria with 4,587 million, and France with 4,444 million francs. Classed, however, according to population Denmark is easily first, where the average deposit per inhabitant is 418 francs 18 centimes, and then Prussia, Norway, Austria, Sweden, Great Britain, and France in the order named. The average deposit per inhabitant in France is 114 francs 17 centimes. Since, however, all the inhabitants of a country are not savings bank depositors, a further set of statistics is given, showing what proportion of the inhabitants of each country has resource to the savings banks. Again Denmark leads, for the proportion of its savings bank depositors to the rest of the nation is 50 per cent. Sweden is 35 per cent., Norway 32 per cent., France 29 per cent., Prussia 26 per cent., and Great Britain 25 per cent. With regard to the average amount of deposits per depositor as distinct from per inhabitant, Holland takes first place with 1,213 francs. Then follows Austria, Prussia, Denmark, Norway, Russia, Great Britain, Sweden, and France. In France the average deposit held by each depositor is 393 francs.

**Canadian Railroads and "Owner's Risk."** It is reported that the Canadian Railway Commissioners have been busy amending the regulations respecting goods carried at risk of consignor. Some two hundred odd articles which have previously been carried at owner's risk have been removed from such classification and placed under "carrier's risk." As regards the remaining classes, goods may be transferred from owner's risk to carrier's risk on payment of 25 per cent. advanced rates, instead of 50 per cent. as heretofore. "Owner's risk" must be defined by each consignment note, and where such risk is operative it will not excuse carelessness on the part of a railway company or its employees.

**Bankruptcy Law Amendment.** The Bankruptcy Law Amendment Committee desire to make it publicly known that they will be glad to receive communications from representative associations and bodies who may desire to give information or evidence upon the subjects specified in the order of reference to the Committee. Communications should be addressed to the Secretary, Mr. Walter T. Kaye, Board of Trade Offices, 1 Horse Guards Avenue, Whitehall, S.W., from whom copies of the order of reference may be obtained. A legal correspondent of *The Financial Times* takes the opportunity of discussing some points in connection with the existing Acts which require amendment. We merely outline some of the suggestions made, as most of our readers will doubtless have their own programme of amendment:—

- (1) Assignment of book debts.
- (2) Preference without intent.
- (3) Protected transactions under Section 49.
- (4) Exceptions to reputed ownership rule.
- (5) Greater scope of administration orders under County Court jurisdiction to include cases where debts do not exceed £300, or in some way to drag in what are now "summary" estates.
- (6) Stupid distinctions between special and general proxies and times for lodging same. Why should proxies be required at all?
- (7) Appointment of special manager is in discretion of Official Receiver only. Right of appeal to the Court should be permitted.
- (8) Removal of restrictions as to bankruptcy of married women.
- (9) Easier means of obtaining discharge.
- (10) Scheme or composition binding if passed by majority of creditors.
- (11) Trustees of voluntary arrangements between debtors and creditors to be brought under official control.
- (12) Where realisation of estates is protracted, creditors should be supplied with a copy of the half-yearly Board of Trade account (presumably in summarised form).

The list does not, of course, pretend to be exhaustive, but one or two of the points mentioned are worthy of

remembrance. We shall be glad to find space in these columns for suggestions on the part of our readers as to amendments that may strike them as being desirable.

**The Right to Wind-up.** In the course of a long leading article entitled "A Three-Men Company,"

*The Financial News* says that although nothing has been heard of the Departmental Committee appointed by the Board of Trade last year to inquire what amendments are necessary in the Companies Acts, "the modification of the law proceeds gradually at the hands of the Chancery Judges, who, curiously enough, are not represented on the Committee." We rather fancy this is arrogating to the Chancery Judges a power which they do not possess, and of which fact we feel sure our contemporary is well aware. The remark seems to be based on the statement that Mr. Justice Buckley has demonstrated that "there are aspects of the law relating to mortgages much more urgently requiring investigation than the comparatively narrow question of including 'liens in law' among the charges that must be registered." It is bolstered up by the comment that "in March last year Mr. Justice Buckley set himself to rummage through the precedents to see whether he could find grounds for refusing to permit debenture-holders to exercise their right to a receivership . . . when they conceived their security to be 'in jeopardy.'" Other comments are:—"For many years it had been regarded as essential for a creditor asking a winding-up order to prove that there was a presumption that he might obtain something from the estate in satisfaction of his debt." Mr. Justice Buckley "holds that the matter is essentially one for the exercise of judicial discretion, and in the case before him this week he found circumstances amply warranting him in ordering the liquidation of a company at the instance of trade creditors, though there was little likelihood of their finding a surplus of assets in which to participate."

**Municipal Finance.** Mr. T. Eaton Robinson, C.A., the Glasgow City Registrar, has expressed

the view that, while it is desirable that every endeavour should be made to discourage dangerously extravagant capital expenditure on the part of local authorities, the Public Departments began at the wrong end when they endeavoured to put obstacles in the way of local

authorities utilising their borrowing powers in the simplest and cheapest possible way. We entirely agree that, if it be conceded that certain moneys shall be borrowed for public purposes, it is in the public interest that these moneys should be raised in the most inexpensive manner possible, but we question whether the Local Government Board is in the remotest degree responsible for the increasing difficulty experienced by municipalities in raising further loans. This difficulty is, it seems to us, in part due to the dearth of money at the present time as compared with (say) a dozen years ago, but chiefly to the fact that the security now offered is considerably less attractive than was formerly the case, in consequence of the watered condition of the Capital Accounts of so many of these local authorities owing to the inadequate provision that has been made for depreciation. The need for further attention to this important point is, we gather from Mr. Robinson, being duly appreciated by the Scottish Office, which now shows an increasing tendency to make the provisions for Sinking Fund more onerous; in fact, he tells us the officials practically admit that they wish the Sinking Fund to cover depreciation as well as the repayment of debt. We very much doubt whether the Department is really making any serious attempt to charge both depreciation and the repayment of loans against current revenue. But if it has at length come to a belated sense of its responsibilities, and decided to issue no more loans upon such terms that the assets to be acquired out of the proceeds thereof may be, and frequently will be, worn out and useless before provision has been made for the repayment of the debt, then we can only congratulate the officials upon having at last realised their great responsibility in the matter—for the responsibility must of necessity really rest with the Government Department. If the Legislature requires the official sanction to a loan as a condition precedent to its being raised, it is only reasonable that local authorities should assume that so long as they comply with the conditions laid down they are doing all that is really needful, and indeed all that it would be fair for them to do in justice to the present ratepayers.

**Secret Commissions.**

On the 9th inst. the House of Lords unanimously upheld the decision given by Mr. Justice Grantham on the 22nd January 1904 in the case of *Stewart and Others v. Foster* (*vide Accountant Law Reports XXX., p. 26*). This was an action

brought by the plaintiffs as trustees under the will of the late Mr. Frederick Soames to recover from the defendant, Mr. Harry Seymour Foster, the sum of £1,500 and interest which it was alleged had been received by the defendant without their knowledge as commission from the purchaser of certain estates in Ceylon while he was acting as agent for them. The Lord Chancellor stated that nothing was clearer than the finding of the jury that Mr. Foster received a commission from the purchaser while acting as agent for the vendors, and that being so, he was bound to account for that commission to the vendors. Lord Robertson added that in his opinion this was a clear case of an illegal secret commission.

**The Accounts of Co-operative Societies.** A correspondent forwards to us for comment the report and accounts of the Stratford Co-operative and Industrial Society, Lim., for the quarter ended 30th March last. This document comprises no less than ten demy pages, and we have no hesitation in saying that it is far too diffuse to be comprehensible to one per cent of the members of any co-operative and industrial society; indeed, we may go further and venture the statement that no trained accountant would care to express any very definite opinion on the position from the information put forward, save that the Society appears to be managed at a very satisfactory profit. The accounts, as is usual in such cases, are audited by laymen, and while this unfortunate state of affairs is allowed by Parliament there seems but little hope that proper attention will be given to the desirability of these important societies submitting not merely correct accounts, but also accounts which are really intelligible to those for whom they are primarily intended.

**Municipal Trading Results.** Quite apart from the question of criticising published figures it is of interest to note that, according to the "Municipal Year Book for 1905," there were some 121 municipalities undertaking the supply of electric light and power. Of these, 15 made some contribution to the relief of rates, and 106 no contribution, there being a dead loss on trading in 44 cases chargeable against the rates. Of the 48 municipalities owning tramways, 13 made some contribution to the rates, and 35 no contribution, while in 8 cases a loss on trading is disclosed. It will thus be seen that, even accepting the published figures, the

results of these so-called remunerative departments are by no means uniformly encouraging, and when it is added that in the case of 76 electric lighting undertakings and 17 tramway undertakings no provision for depreciation was charged against profits, it will be seen that the figures in the "Municipal Year Book" do not err upon the side of caution. We have not gone into the subject of the comparative charges of municipalities and private undertakings, because we consider that—at all events, until a profit has been earned available for the relief of rates—the proper time cannot have arrived to consider any reduction of the existing scales of charges.

**The Auctioneers' Institute.** The annual general meeting of the Auctioneers' Institute was held at the new headquarters, 31 Russell Square, W.C., on the 10th inst., under the presidency of Mr. James Boyton. The total membership was reported to be 1,702, while 110 candidates had presented themselves for examination during the past year, against 68 in 1904. Reference was made to the liability incurred by an auctioneer who, acting under instructions, sold goods which were subsequently found to be held under hire-purchase agreements, and it was suggested that these agreements, even more than ordinary bills of sale, ought to be registered for the protection of innocent parties, which certainly seems only reasonable.

**The Central Insurance Company, Lim.** The annual general meeting of the Central Insurance Company, Lim., was held on the 17th inst., when the directors' report and accounts for the year ended the 31st December last will be submitted for approval. The gross premium income for 1905 was £342,004, as against £211,053 in 1904, against which reinsurances were effected absorbing £188,259 os. 4d. The published accounts would, we think, be clearer if these reinsurances were shown as a reduction from the gross premiums, thus enabling the net premium income to be observed at a glance. The loss ratio for the past year was 48.9 per cent., against 40.1 per cent., the average experienced during the six years of the company's existence. It is reported that the company's net loss in respect of the San Francisco calamity is not expected to exceed £10,000, against which there is a general Reserve Fund of £35,000, irrespective of the

£17,335 to be carried forward after paying a dividend of 2½ per cent. free of income-tax. The report of the auditors, Messrs. C. F. Kemp, Sons & Co., states that the investments in the Balance Sheet are taken at cost price, and that their market value on the 31st December last had "somewhat depreciated," against which there is a special reserve of one thousand pounds shown in the accounts; but the report does not state whether or not this sum of one thousand pounds is sufficient to cover the depreciation referred to. From the directors' report we gather that that company has Accident and Burglary departments, in addition to transacting a Fire business. We would suggest that there should be separate Revenue Accounts shown in respect of each of these departments.

**The Caledonian Insurance Company.** The 101st ordinary annual meeting of the shareholders of the Caledonian Insurance Company was held at

Edinburgh on the 3rd inst., when the directors' report and accounts for the year ended the 31st December last were submitted and approved. The Life department showed new business done to the extent of £688,417, representing a premium income of £27,828, including £4,311 by single payments. The net premium income was £234,900, and claims (including bonuses and endowment assurances matured) absorbed £124,564. In the Fire department the net premium income was £434,860, against claims (after deducting sums re-assured) of £206,875, representing a loss ratio of 47·75 per cent. On the subject of the San Francisco disaster the chairman pointed out that under its policies the Caledonian Office was not liable for damage caused by fire to a building or contents should such building or contents, or any part thereof, have fallen previously from any cause except fire. The company's net risks in the whole of the city of San Francisco amounted to £902,000, of which, however, only £490,000 were within the area involved in the recent earthquake. The estimate of claims was put at £250,000, whereas the Fire Funds, exclusive of Reserve Fund for unexpired risks, were £270,000, but, of course, these published reserves do not by any means exhaust the reserves of the company, quite apart from its paid-up capital of £107,500, and its uncalled capital of four times that sum. That the company feels fully competent to deal with any loss that is likely to be eventually experienced is sufficiently shown by the fact

that the customary dividend of £1 per share and bonus of 4s. per share, free of income-tax, were voted, leaving £71,839 to be carried forward on Profit and Loss Account.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

## Licensing Act, 1904.

[ANSWER TO D. OWEN.—The Act, having provided that the landlord is only to contribute to the compensation fund by way of "deduction from rent," if there is practically no rent there can be no contribution by the landlord. It is also to be borne in mind that under Schedule II. "the amount deducted shall in no case exceed half the rent."—OUR LEGAL CONTRIBUTOR.]

## Scottish C.A.'s Practising in England.

*(To the Editor of The Accountant.)*

SIR,—In your recent strictures upon Scottish Chartered Accountants practising in England you do not seem to have suggested any remedy for a state of affairs which you deplore. Your principal objections are: (1) That for a Scottish C.A. to call himself "Chartered" in England is misleading, as the Scottish examinations are, on the legal side, no test of fitness for English practice; and (2) that Scottish C.A.'s are not under the discipline of the Institute.

As regards the first objection there is, at present, no way in which the C.A. can justify his existence in England, except by serving another five years under articles and becoming an A.C.A. Unless he does this you seem to expect him to rank himself as an unattached accountant. As for the second objection, you can hardly expect anyone to submit to the authority of the Institute without obtaining the advantages of membership.

What I would suggest is that you, following the example of the Institute of Actuaries, admit the value of the Scottish diploma up to a certain point, and allow the Scotsman to qualify for admission to the Institute by passing the Final Examination only.

I would ask you to kindly consider this proposal, and to make any remarks on it that you think fit in your paper, so that I may have an opportunity of replying to same.

Yours faithfully,

May 9th 1906.

UNSPEAKABLE.

### Gas Companies and Depreciation.

(To the Editor of The Accountant.)

SIR,—I am glad to see "Spectator's" letter in your issue of the 5th inst., and hope that some practitioner experienced in the audit of Gas Accounts will give your readers the benefit of his views.

I am inclined to think that "Spectator" is right when he says that the practice of providing for the depreciation of assets by direct charges to Revenue Account, instead of through the statutory Reserve Fund, is almost universal.

How could a privately-owned gas undertaking possibly compete successfully with rate-aided electrical undertakings if the directors were to give their competitors every little detail of the working of their business? For this reason, if for no other, I think that Gas Accounts will rarely be prepared on the purely theoretical lines indicated in your leading article of the 10th February.

Again, would not the Surveyor of Taxes want his 5 per cent. on all sums credited to "Reserve Fund"?

Yours faithfully,

8th May 1906.

X. Y. Z.

### Forfeited Shares.

To the Editor of The Accountant.

SIR,—The article referred to by me in my letter of the 7th inst. reads "if any person fails to pay any call on the balance of his share money, or to become a member of the club, or having become a member fails to pay any subscription due from him as a member within fourteen days from notice being posted to him, the shares allotted to him may be forfeited, and such person shall cease to be a member by a

"resolution of the directors to that effect." The company concerned is a licensed club. By the above article it will be seen that failure to pay an outstanding club subscription will render the shares liable to forfeiture. In my letter of the 7th I stated the effect of the article in rather wider terms, as I was quoting from a note.

Mr. F. B. Palmer states in his work on "Company Law," p. 136, 5th Edition, "sometimes it is thought 'better to avoid any question as to the operation of 'the lien clause by striking it out altogether and 'adopting in lieu thereof a forfeiture clause for non-payment of any debt; such a clause is sometimes used 'and is effective' (*Dunlop v. Dunlop*, 21 Ch.D. 583).

Yours faithfully,

Gravesend, 11th May 1906.

A. WARR KING.

### "Not Negotiable."

(To the Editor of The Accountant.)

SIR,—I notice in the issue of the 5th inst. an inquiry as to the significance of the words "not negotiable," as printed on postal orders, and I note your reply that the intention is undoubtedly to prevent postal orders being passed from hand to hand.

I had understood that the words "not negotiable" did not, even though the postal order (or cheque) were properly crossed, prevent the document being passed from hand to hand, but that the whole significance of the words lay in the fact that a transferee could not have a better title to the document than the transferor. Subject to this disability I had understood that the document could pass from hand to hand just as freely with the words "not negotiable" upon it as without.

Perhaps your legal contributor will kindly make this point clear.

Yours faithfully,

11th May 1906.

F.C.A.

### Income Tax.—Married Women.

(To the Editor of The Accountant.)

SIR,—A husband and wife are both employed by the same limited company, the former as director and secretary, and the latter as bookkeeper. The Surveyor contends that they should pay tax on their joint income (which does not exceed £500) as the business of the wife is not unconnected with that of the husband. The



husband contends that they should be assessed separately, as the business of bookkeeper is not connected with that of director and secretary, and it is a mere accident that they happen to be employed by the same company. I shall be glad if you or any of your readers have heard of a similar case, or can give me any information on the point.

Yours faithfully,

12th May 1906.

TAX.

### Depreciation of Printing Machinery.

(To the Editor of The Accountant.)

SIR,—If "One Interested" will refer to the appendix to the Report of the Departmental Committee on Income Tax, p. 14, Appendix No. 4, he will find the rates of allowance for wear and tear of newspaper and printing machinery, which are given in different districts, as follows:—

Dundee: 10 per cent. on printing machinery running double shifts.

Glasgow: 6 per cent. on ruling and bookbinding machines; 6 per cent. on type, linotype machines, &c.;  $7\frac{1}{2}$  per cent. to include renewal of type not charged to revenue.

Nottingham:  $8\frac{1}{2}$  per cent. on written down value.

Cardiff: 5 per cent. on written down value;  $7\frac{1}{2}$  per cent. on written down value for newspaper printing machines; 15 per cent. on type.

Yours faithfully,

London 12th May 1906. J. J. MACGREGOR.

(To the Editor of The Accountant.)

SIR,—Replying to "One Interested," whose letter appeared in your issue of last week, I beg to instance that the company of which I am Secretary, and which in the printing world holds a position second to none, affords an example where a higher rate than 5 per cent. is allowed for wear and tear of plant and machinery, as for more than twenty years a rate of 10 per cent. has been in vogue.

In November 1892 the local Surveyor of Taxes contended that 10 per cent. was excessive, and that 5 per cent. would be a reasonable deduction. An appeal against this dictum was made, with the result that the higher rate was conceded by the District Commissioners, and until the end of 1905—that is, for thirteen years—a succession of Surveyors have not queried the justice of this decision.

In November last, however, one of H.M. Inspectors of Inland Revenue reopened the question. The rate of depreciation was investigated *de novo*, and an appeal again made to the Commissioners, H.M. Inspector pleading that as 5 per cent. was the usual rate allowed in London it should not be a higher one in the provinces. A strong case was made out by my company proving conclusively that a depreciation of 10 per cent. on diminishing value was not only not excessive but even insufficient for the wear and tear of the particular plant and machinery under discussion. The Commissioners (only one of whom was present at the previous appeal) without considering the precedent of the former ruling, but guided by the records of the life history of the company's machines, and unable to refute the evidence, admitted the justice of the claim, and the 10 per cent. rate remains as before.

Yours faithfully,

May 15th 1906.

R. L. B.

### Advertising.

(To the Editor of The Accountant.)

SIR,—After reading your last week's leading article, curiosity tempted me to look into a directory a day or two ago, and to my surprise I saw my name printed therein in large letters under the heading "Chartered Accountants." As I have never paid one halfpenny for even the insertion of my name in a directory, I can only imagine that some names are inserted in capital letters as "decoy ducks," with a view to appealing to the vanity of others, and the collection of a small fee, if possible. In my case I cannot attribute it to natural selection.

Yours truly,

ANTI-DARWIN.

### Registration for the Profession.

(To the Editor of The Accountant.)

SIR,—I know your space is valuable, but I trust you will spare enough of it for this letter, which I pen in the interests of the whole of the accountancy profession.

Every now and again we read of suggestions being made, or resolutions proposed to be submitted to meetings, having for their object the amalgamation of the two principal accountants societies or some movement

with a like result, but nothing further is done. The subject is postponed because "notice was not given" or for tactical reasons, or somehow shelved, and the present unsatisfactory state of things goes from bad to worse. The older members agree in desiring amalgamation or registration, but, I understand, are outvoted again and again by the juniors who have lately joined, and are doubtless consumed with a mistaken view of their importance. While this policy is causing a standstill with the two recognised Societies, whose examinations are practically synonymous (I read with a barrister for my Final, who was preparing another man for the other Society, and we always had the same papers and the same lessons), there are arising around us numerous other Societies who admit men without any examination whatever. As is shown by recent cases, it is doubtful whether these irregular Societies can be prevented from using designations which confound with the recognised Societies, and thus the position becomes more grave every day. Less than a month ago a man called at my office and sent in his card with "C.A." following his name. I afterwards discovered that this stood not for "Chartered Accountant" but for "Corporate Accountant."

Until the minor differences, which are surely capable of easy adjustment, are settled within the ranks of accountants themselves, it will be useless to approach any Government with a view to registration. But so soon as this desirable end can be accomplished, so soon will the profession take its proper place and receive proper recognition; and the longer it is delayed the more difficult will it become, and the more numerous will be the crop of irregular practitioners who bring discredit not only upon themselves, but unfortunately also on the whole accountancy profession.

Yours faithfully,

PRO BONO PUBLICO.

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## The Institute of Chartered Accountants in England and Wales.

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THE following is a list of applicants admitted at the Council meeting held on the 2nd May 1906, who completed their membership before the 17th inst. :—

### *Former Members Re-admitted to Membership as Associates not in Practice.*

Heale, Alfred Chasty, 38 Savile Row, W.

Smith, Charles Edward, 8 The Cedars, Priory Road, Hall Green, Birmingham.

Trow, Walter Frank, Athenæum Chambers, Temple Row, Birmingham.

### *Associates Elected Fellows.*

Boothroyd, Frederick William, 6 & 7 Corridor Chambers, Market Place, Leicester.

Brooks, William Charles (Brooks, Williams & Co.), 11 & 12 Clement's Lane, Lombard Street, E.C.

Carrington, Evan Murray, 18 & 19 Ironmonger Lane, Cheapside, E.C.

Greening, George Shuttleworth (George Franklin & Co.), Imperial Chambers, Norfolk Row, Sheffield.

Ledsam, Henry Thomas Clutton Salt, B.A. (Harrison, West, Ledsam & Co.), 16 Waterloo Street, Birmingham; and at London.

Mounsey, Charles Harrison (Lewis & Mounsey), 6 Old Jewry, E.C.; and at Liverpool and St. Helens.

Nye, Ralph (Maurice Jenks, Nye & Co.), 6 Old Jewry, E.C.; and at Johannesburg.

Riddell, Charles Edward (Hadfield & Riddell), 1 George Street, Sheffield.

Rooke, Charles William (Chas. W. Rooke & Co.), 46 Queen Victoria Street, E.C.

Williams, Owen Wyatt, B.A. (Wyatt Williams & Co.), 14 Ironmonger Lane, E.C.

### *Admitted as Associates not in Practice.*

Alderson, James Thomas, clerk to W. H. Davy, 28 Bedford Street, North Shields.

Bayley, Arthur Bell, Milton Chambers, Milton Street, Nottingham.

Beswick, John Fraser, 15 Victoria Buildings, Manchester.

Blease, Harvey, clerk to Blease & Sons, Fenwick Chambers, Fenwick Street, Liverpool.

Burford, Sidney Joseph, clerk to James & Henry Grace, 24 Clare Street, Bristol.

Cash, John Percy, clerk to Butterfield & Hartman, City Chambers, 2 Darley Street, Bradford.

Cobb, Ernest, clerk to Welch & Parkinson, Commerce Court, 11 Lord Street, Liverpool.

Cossart, Bertram, clerk to W. Charlesworth & Co., 4 Bridge Street, Stockport.

Davis, Harold McFarland, clerk to Payne Brothers & Rowe, 70 Finsbury Pavement, E.C.

de Zouche, Richard Caton, clerk to Lewis & Mounsey, 3 Lord Street, Liverpool.

Harrison, Augustus Taylor, clerk to Harrison, West, Ledsam & Co., 16 Waterloo Street, Birmingham.

Hart, Sydney Walter, clerk to Thaddeus Ryder & Co., Newton Chambers, Cannon Street, Birmingham.

Hickling, Frank Goodliffe, clerk to Trenow & Heisch, 18 St. Helen's Place, E.C.

Milligan, James Stuart, clerk to Gibson & Ashford, 39 Waterloo Street, Birmingham.

Moss, Arthur Herbert, clerk to Hart, Moss & Co., 22 Moorgate Street, Rotherham.

Murgatroyd, George Barnard, clerk to Murgatroyd, Shuttleworth & Haworth, Duchy Chambers, Clarence Street, Manchester.

Nicholson, Alfred Edward, clerk to Lloyd & Walker, British and Foreign Chambers, 5 Castle Street, Liverpool.

Robinson, John William, Heaton Mount, Heaton, Bolton.

Senior, Edgar, clerk to A. E. Percy, 2 Priory Street, Dudley.

Smalley, George Arnold, clerk to D. S. Derry, 22 Great Winchester Street, E.C.

Smyrke, Wyat, clerk to C. O. Nicholson, County Chambers, 66 John Street, Sunderland.

Webb, George Richards, clerk to B. Jackson & Co., 38 Lime Street, E.C.

White, John, clerk to Gundry, Straus & Soper, 7 Great Winchester Street, E.C.

Wilson, William, clerk to Geo. F. Clarke & Co., Investment Buildings, 67 Lord Street, Liverpool.

### Meetings for the ensuing Week.

*Tuesday and Wednesday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—Intermediate Examination, commencing each day at 10.30.

## Union of Chartered Accountant Student Societies.

### Prize Essay Competition.

THE result of the President of the Institute's (Mr. John Gane, F.C.A.) arbitration in the Prize Essay Competition on "The difference in Constitution and relative Advantages of Private Firms and Limited Companies, and the matters of Account involved by a Conversion," is as follows:—

1st Prize (£5 5s.)—Mr. Stewart Green (Sheffield Students' Society).

2nd „ (£2 2s.)—Mr. E. T. Scholey Pepper (Sheffield Students' Society).

3rd „ (£1 1s.)—Mr. Cyril Bird (London Students' Society).

The number of competitors was nine.

## Sheffield Society of Chartered Accountants.

### Annual Dinner.

THE Sheffield Society of Chartered Accountants held their annual dinner at the Royal Victoria Hotel, Sheffield, on the 11th inst. Mr. S. Taylor Gill (President) was in the chair, and supporting him were the Lord Mayor (Colonel Hughes), Mr. H. W. Wilshire (President Leicester Society of Chartered Accountants), Mr. Howard Heaton (President Birmingham Society of Chartered Accountants), Mr. Registrar Binney, Mr. J. C. Clegg (Official Receiver), Mr. Horace Wilson, Mr. T. Walter Hall, Mr. F. H. Metcalfe (Vice-President), Mr. J. H. Moulson (Hon. Treasurer), and Messrs. Jarvis W. Barber, N. W. Burbidge, A. D. Barber, E. Bennett, J. T. Barr, C. J. Collier, N. H. Deakin, H. S. Gardner, Wm. Holmes, M. Webster Jenkinson, C. H. Moss, A. W. Macredie, T. C. Parkin, W. A. Richards, T. G. Shuttleworth, John Wortley, Hy. Wells-Smith, H. E. Percy Beard (Hon. Secretary), F. H. Smith, H. M. Elliott, W. J. Furnival, H. Toothill, C. F. Wike, Hy. Deane, S. Levick, A. Davidson, J. H. Davidson, H. Atkins, W. M. Camm, A. S. Fawcett, W. M. Eadon.

After the loyal toasts had been honoured, Mr. N. W. Burbidge toasted "The President," in complimentary terms.

Mr. S. Taylor Gill, in reply, expressed pleasure at the

fact that year after year the Sheffield Society had added to its members, and that there were very few Chartered Accountants in the city who were not included in it. They were glad to receive the younger men into the Society as they passed into the profession, because it was of some benefit to all of them that they had an organisation which could consider local needs, and, if occasion arose, speak authoritatively upon the requirements of Sheffield accountants to the Council of the Institute. (Applause.)

The Lord Mayor, responding to the toast of "The Lord Mayor and Corporation and the city and trade of Sheffield," proffered by Mr. F. H. Metcalfe, said he thought the Corporation had been behaving lately in a manner which must be exceedingly acceptable to accountants. They were seriously proposing to have an effective control over expenditure. (Hear, hear.) It was an honest endeavour to control expenditure before the money was disbursed in order to see that it was properly expended, and not, as had frequently happened in the past, spent for utterly different purposes from that for which the authorisation was obtained. He did not want to raise any false hopes in the breast of any ambitious member of the Society, but he had heard in the deliberations of the committee dealing with this matter a suggestion of an independent outside audit. (Hear, hear.) He was, however, almost afraid that was a feat of virtue the Corporation would take a long while in achieving.

Mr. J. W. Barber submitted "The Sheffield District Incorporated Law Society" in humorous terms.

Mr. Joseph Binney, replying, spoke of the cordial relations which existed between solicitors and accountants in Sheffield. He thought it would be of assistance to the Courts of Justice if reference to Chartered Accountants of complicated matters of account now dealt with by the chief clerks of the Court were officially recognised.

Mr. H. Deane, Registrar of Leicester County Court, gave "The Institute of Chartered Accountants in England and Wales." With an income of nearly £13,000, it had an accumulated fund of £63,601, and a membership of 3,399. The time had arrived when accountants should be placed on a level with solicitors, and given a statutory authority under which no person should be allowed to practise as a public accountant unless he had qualified in a way that would satisfy the Chartered Accountants' Institute. (Hear, hear.) All admissions to their profession should be through their Society. (Applause.)

Mr. T. G. Shuttleworth made response, discussing the work of the Institute, and applauding the work of the Benevolent Association.

For "Kindred Societies," toasted by Mr. W. Holmes, Messrs. Howard Heaton and H. W. Wilshire responded.

Mr. A. W. Macredie gave "The Visitors," and Mr. J. H. Davidson made acknowledgment.

An enjoyable programme of glees and songs was given by the Æolian Glee Singers, Messrs. George Lyon (alto), J. A. Marsden (tenor), F. Merriman (tenor), and J. H. Biggin (bass), the accompanist being Mr. Percy Pickard.

## Notes on the Accounts of Building Land Development Companies.

By Mr. PERCY GARRATT, A.S.A.A.

A PAPER read to the members of the South Wales and Monmouthshire Society of Accountants and Auditors at Cardiff on 5th February 1906.

### Introduction.

The subject—viz., "The Accounts of Building Land Development Companies"—to those of you who audit this variety of company will, I am sure, present no difficulty, but those auditors whose professional duties have not brought them in direct contact with this form of company and its accounts will, I hope, be able to glean some details as to the unfamiliar items and difficulties to be met with.

As you are well aware, each branch of trade or business presents some individual feature of its own, in some instances necessitating special experience and skill.

### Special Features.

The distinguishing features of this class of company's accounts interesting to auditors are as follow:—

- (1) The fact that a development company, although trading in its fixed assets and not its floating assets as an ordinary trading concern, declares its dividends in the same manner as a trading company and not as a mining or other company of a similar nature, where the dividend declared includes a partial return of capital invested in the asset.
- (2) Outstanding liabilities accruing over a considerable number of years, of which no *prima facie* disclosure is made by the company's accounts.
- (3) The methods and difficulty of computing profits when only a portion of the estate has been realised, and the consequent valuation of the residue of the company's estate and development expenditure upon it.
- (4) The treatment of non-realisable assets in the company's accounts, and the valuation of shares.

interests where no precise data of value is indicated.

To explain to you how these features arise, and subsequently the methods employed in dealing with them, I will give you a short epitome of the usual transactions.

*Description and Special Features affecting Auditors.*

Building land development companies may be subdivided into two sections—

- (1) Companies developing suburbs and outlying districts adjoining large centres.
- (2) Companies engaged in the promotion of seaside and inland health resorts.

In the instance of suburban estates being developed by one of these companies it ensures that the scheme embraces usually the entire area available, and secures to the purchaser minimum building values with regard to adjoining plots. The company in this manner becomes responsible to the purchaser until its powers and liabilities are conveyed to the local authorities, which occurs when the roads are publicly taken over by them.

The special features identified with this class are Ground Rent Values and the finance of builders.

The second class commences its operations from a much earlier stage, and is concerned in the purchase of estates often comprising solely agricultural land, where favourable circumstances appear to exist for the establishment of a health resort.

The distinguishing feature of this class to the auditor is the number of subsidiary companies formed by the parent development company in furtherance of its undertaking.

In one example a company of this description was called upon to build a light railway, waterworks, gasworks, and a pier, all worked by subsidiary companies.

In another instance a development company in developing its estate formed subsidiary companies as follows:—Building finance company, waterworks and electric supply companies (with Parliamentary and Board of Trade powers respectively), a hydro and hotel, golf club, and a mineral water company. These companies were in addition to working a brickfield and letting shooting, fishing, and other sporting rights by the development company itself.

From this it will be seen that an auditor will be brought into contact with a variety of undertakings necessary to the pursuance of the company's scheme of development, in which the parent company will usually retain share or other interests.

As by far the majority of these subsidiary companies are without any quotation whatever, and fail to give any indi-

cation of the current value of their shares, the auditor will be met with the extremely difficult task of checking the valuation from year to year under which the development company's holding is included in its Balance Sheet.

In addition it will be easily seen that the success of the subsidiary company must have a material bearing upon the success of the development of the estate; and in valuing the chief difficulty is to discriminate where realisable value ends and value as a means of advertisement and development to the estate commences.

On the other hand the development company may be called upon to support a subsidiary company in which it holds the majority of shares issued that cannot possibly be revenue bearing as a separate entity; or, as an alternative, write off the whole value of its holding from its Balance Sheet.

I will now assume that the company has purchased its estate, approved its scheme of development, and commenced road construction.

Auction sales are instituted, and the auditor will then find that the vendor company has sold plots of varying depths and frontages to both existing roads, and roads under construction or to be constructed. He will also discover from the sale particulars that the company has usually sold upon the following terms, and imposed upon itself several liabilities, both immediate and future.

*Special Clauses of Conditions of Sale.*

These special clauses are as follow:—

- (1) Possession of plots given to purchasers on payment of 10 per cent. deposit, the balance to be paid by half-yearly instalments (if desired by the purchaser) extending over five to ten years (varying with the nature of the estate undergoing development); the unpaid balance of the purchase consideration completed by this method bearing interest at the rate of 5 per cent. per annum.
- (2) Free conveyances to purchasers.
- (3) Plots sold free of tithe and land tax redeemed.
- (4) Contract to construct roads giving access and frontages to plots sold.
- (5) Contract to construct sewers and drainage works under a levy upon the purchaser at per foot frontage (usually about 3s. per foot).
- (6) In some instances a guarantee by the vendor company as to an adequate water supply and sewerage system.

I propose dealing with these clauses from an auditor's point of view subsequently, and will now deal with the form of accounts employed to record the company's transactions.

### Accounts.

Omitting the receipts on account of capital, debentures, and mortgages (the two latter of which you will find very much in evidence in this type of company), the transactions will mostly comprise the consideration for plots sold, together with interest on instalment agreements; and, on

the other side, expenditure (outside the purchase of the estate) on road construction, drainage works, and other development.

The sales are recorded in a "Plot Sales Journal," ruled to provide the following information:—

### PLOT SALES JOURNAL.

[illegible]

The detail is posted to an "Estate Ledger," ruled with double columns, both *Dr.* and *Cr.*, for "Principal" and "Interest," some of the information required being entered by way of heading.

## ESTATE LEDGER.

[illegible]

Proceeding to the Cash Books, we find that they are subdivided as to a "General Cash Book" and an "Instalment and Sewers Cash Book."

The detail of instalments received is entered into the "Instalment and Sewers Cash Book," ruled as follows:—



The purchase consideration of the estate is distributed over the acreage, when the scheme of development has been approved, and valuations are made as between various areas, existing frontages or portions immediately adjacent being penalised by a higher valuation than outlying portions where difficulties of development are anticipated, or time (and the development of the other portions of the estate) is required to ripen them into eligible building sites.

This valuation is apportioned by the directors with the technical advice of the company's surveyor, but the auditor should closely examine it to see that the acreage to be used in roads, public gardens, and other non-productive areas, as shown by the scheme, be deducted from the total acreage of the estate purchased.

The auditor will also remember when dealing with this calculation the condition of sale, already mentioned, with reference to plots being sold free from tithe and land tax redeemed, and, as he will usually find that a tithe rent charge and land tax exist, and have not been redeemed by the company, he must see that the cost of redemption of both of these annual charges be added to the primary cost of the estate.

Adjustments in either of these items, after development has been taking place for some years, must penalise the remainder of the estate unsold when such adjustment becomes imperative.

#### *Sale Contracts Cancelled.*

After the first year a further unit is introduced into the calculation of the cost of land sold, viz.:—Plots resumed by the company where the sale contracts have been cancelled, or, in other words, bad debts. It will be remembered that under the conditions of sale only 10 per cent. of the purchase consideration may be paid by the purchaser when signing the contract, and that where bad debts are experienced (which are by no means uncommon, as the bulk of the purchasers are builders and tradesmen) the auditor must clearly ascertain that the estimated profit upon the sale is written back.

There is a tendency to include these plots at the amount remaining unpaid upon them when resumed by the company, but, as the auction sale expenses in themselves often absorb 10 per cent. of the purchase moneys, it will be readily seen that where only the deposit or a few instalments have been paid the probability is that, if included in the estate at the balance remaining unpaid (a balance which also includes interest to the date of resumption), a loss may occur on resale.

In any event, future sales are penalised with a heavier percentage for auction expenses, and the company is including in its accounts a profit on a sale which it has failed to realise.

If the auditor be able to influence the directors to make some annual provision against cancelled contracts, he will not find his efforts unproductive when the estate is finally realised, more especially when prices obtained for plots fall off in future years, or the development is retarded by other influences.

#### *Apportionment Chargeable on Plots Sold for Roads, &c.*

We now turn to the valuation of the apportionment of roads construction.

This is made upon the basis of the cost of the road—viz., cost as per contractor's estimate, plus surveyor's charges for supervision, calculated at per foot run of roads constructed, an apportionment being made equally upon the plots on either side at per foot frontage.

In corner plots the return frontage must be charged upon.

Where roads are made giving frontages only on one side to the company's property, the auditor must see that the whole apportionment is borne by the plots fronting to this road.

#### *Apportionment Chargeable for Non-realisable Assets of Company.*

In addition to the above cost of land and roads, a percentage to liquidate the cost of non-realisable assets—as public gardens, piers, breakwaters—and other expenditure the company find expedient for the success of its development, must be added.

The prime cost of the plot before being offered for sale is thus ascertained.

For the easier mode of dealing with the cost and sale of plots, the price obtained and the cost both as to roads and land is spoken of, and calculated upon the unit of "per foot frontage."

The price "per foot frontage" is established by arriving at the relative value of sales and cost from the first acreage calculation.

#### *Plots Built upon by the Company.*

With regard to sales, I may perhaps mention here the tendency of development companies, especially when dealing with plots suitable for substantial residences with grounds, to build the properties themselves, crediting the estate with the sale price of the plot, and not the cost, this price being included in the expenditure upon the property erected.

As, however, the company is almost compelled to embark upon speculations of this nature, where builders cannot be obtained to commence operations for themselves, it often remains to be seen whether the properties



so erected can be readily let or sold at a price to cover the amount expended on construction, together with the sale price of the plot.

I do not think that a nominal profit on the plot should be introduced into the accounts until the properties are actually realised and the profit (if any) ascertained.

This is especially noticeable having regard to the fact of the company's anxiety to obtain purchasers and tenants as a natural means of developing the estate, and also that almost invariably a separate mortgage is created during erection, or, upon completion, secured upon the house and land.

With regard to interest on mortgages so created during construction, I think this may fairly be included in the cost of the property until it is completed and capable of being revenue bearing. This, however, should not apply to mortgage interest during the interim period between completion and sale or tenancy.

#### *Interest on Sale Contracts.*

The second item in the Profit and Loss Account that I have drawn your attention to is "Interest on Sale Contracts." This item is the total of the interest due for the period only, charged to purchasers completing by instalments. An auditor will do well to see that some provision be made against purchasers in arrear with instalments (especially where only the deposit or a few instalments have been paid) as against a possible future resumption by the company of the plots and re-sale.

#### *Legal Charges and Cost of Free Conveyances.*

The only item on the debit side of the Profit and Loss Account needing comment, I think, is "Legal Charges and Cost of Free Conveyances."

This amount is made up of legal expenses incurred in obtaining releases from the mortgagees (if a mortgage exist), together with an annual percentage based upon the period's sales to meet the cost of free conveyances to both purchasers completing immediately and also under instalment agreements. This, it will be remembered, forms one of the conditions of sale, and is an accruing liability spread over a considerable number of years.

Against the provision made each year the cost of conveyances actually incurred in the period is charged and the balance carried forward.

#### *Balance Sheet.*

I now propose to comment upon the unfamiliar items presented to the auditor in the Balance Sheet.

#### *Liabilities.*

Among other liabilities he will find the following group of items:—

#### *Accruing Liabilities.*

- (a) Reserve against tithe and land tax redemption (when this has not already been redeemed).
- (b) Reserve against cost of free conveyances.
- (c) Any further provision required against accruing liabilities.

The origin of these items I have already explained. Although this phrasing is usually employed under the heading of "Reserve Account," I would suggest that a more descriptive title be employed, as "Provision against Accruing Liabilities," or "Accruing Liabilities" only.

Unfortunately the average shareholder appears to misunderstand the exact nature of the word "Reserve" when employed in a Balance Sheet, and I think an auditor should exercise extreme caution in describing provisions of this character by such a title.

#### *Assets Estate.*

Proceeding to the Assets, the first item disclosed is the valuation of the unsold residue of the estate at cost. The auditor having seen that the cost of land sold has been accurately estimated, he should retain a copy of the schedule of area values for future reference.

#### *Roads and Drainage Expenditure.*

The next items following are "Roads Expenditure Account" and "Drainage Expenditure Account." These amounts are the balances on frontages remaining unsold where roads and sewers have been constructed, and a note is made stating that apportionments are chargeable upon the existing frontages when sold.

#### *Non-realisable Assets.*

Assets of a non-realisable character are next met with, and an auditor must watch that the period's sales bear an adequate apportionment.

#### *Sundry Debtors.*

Under the title of "Sundry Debtors" we find the following sub-headings.

- (a) Sundry Debtors on Sale Contracts with Accrued Interest.
- (b) Sundry Debtors on Drainage Charges under Sale Contracts.
- (c) Sundry Debtors on Building Finance Account.

These items, I think, do not need any further explanation.

#### *Ground Rent Values Account.*

The next item (if ground rents have been created) will be "Ground Rent Values Account."

In considering this account discrimination should be made as between ground rents secured by buildings erected and completed and ground leases unsecured—i.e., remaining uncovered.

In considering the valuation of secured ground rents the method which recommends itself more than any other is to adopt the average price realised for the plot at auction, crediting the profit to the period when the building be completed, the purchase consideration being debited to "Ground Rent Values Account."

With regard to unsecured ground rents greater caution is needed. By far the safest method is to credit the revenue of the estate with the annual rent received, as in the instance of an ordinary tenancy, no further treatment of the capital value being made until the ground rent be realised and the actual sale value ascertained.

An auditor should not lose sight of the fact that the principle of dividing profits and paying dividends before realisation is involved in probably large sums when compared with the company's invested capital.

In the case of secured ground rents it can, of course, be safely held that the building and land together will, if required, at least always realise the sale price of the land.

#### *Investment Account.*

"Investment Account" brings us, I fear, to the difficulty I have already referred to—i.e., the valuation of the development company's interest in subsidiary companies promoted by it. The auditor here will find no satisfactory basis available to value these shares. In many instances the company has recouped its expenditure in works and promotion, and is the proprietor of the bulk of the shares issued by the subsidiary company, or the investment may represent a share or nominal profit earned in purchase and sale without actual expenditure by the parent company.

There are many methods employed in dealing with share or nominal profits so earned by way of reserves, &c., but I feel sure that the only secure policy is one whereby the sale is looked upon solely as one of barter, and to include the value of the shares in the company's assets at the original expenditure upon the asset sold. This should be accompanied by an explanatory note that a sale has been made to the subsidiary company for a share consideration, setting out the nominal value, if necessary.

As the parent company's holding is realised from time to time the consideration is deducted from the asset until the whole is sold and the actual cash profit upon the transaction ascertained.

The value of this method becomes apparent against that of depreciation reserves, when a company may be compelled

to write off further depreciation at a period in its existence when it least can afford to do so, or at a time when the residue of the estate has been realised.

#### *Cash on Deposit Account.*

The item shown under the heading of "Cash on Deposit Account" needs, in most instances, some explanation. The nature of this account is not altogether that of an ordinary Deposit Account with the company's bankers. It is usually the sum standing at credit of a Deposit Account in the joint names of the company and the mortgagee, and comprises the principal received from purchasers under instalment agreements and otherwise, and can only be employed in obtaining releases for conveyances (where the total has been received, excluding the deposit paid to the auctioneer and allocated to sale expenses), and for payments in reduction of the mortgage secured upon the company's estate.

The auditor must consider for himself whether a note to that effect be necessary, or that the heading of "Cash on Mortgage Deposit Account," or other descriptive title, be employed.

#### *Income-tax.*

The amount of income-tax paid should be carefully inspected, as the auditor will usually find that the company is paying locally income-tax under Schedule A, and often B, both of which schedules can be deducted from assessments for profits under Schedule D, or for interest paid upon mortgages upon the estate.

#### *Conveyances.*

The auditor, to ensure as far as possible against duplication of conveyances, whether done innocently or otherwise, should inspect all contracts for land sold, and carefully compare the plots conveyed, as shown in the Estate Ledger, with the company's Seal Register, at the same time naturally assuring himself that the purchase consideration has been received.

The Register of Mortgages will also require inspection, to ascertain that up-to-date records are maintained.

#### *Certificate.*

With regard to the certificate given by the auditor, the form usually employed states that the amount taken as profit is subject to the realisation of the residue of the estate (where this remains), or subject to the valuation of the company's surveyor, where one be employed to value the unsold portion of the company's estate each year.

### Personal.

MR. NORMAN W. GRACEY, A.C.A., announces that he has commenced practice as a Chartered Accountant at Broad Street House, New Broad Street, London, E.C., under the style of NORMAN GRACEY & Co.

## The Institute of Accountants in South Australia.

(Incorporated)

THE annual general meeting of the members of the Institute was held at Adelaide, on February 28th.

The following are the

### REPORT AND ACCOUNTS.

The Council have the honour to submit the following Report for the year ended 31st December 1905.

(1) The roll of membership as on 31st December 1905 contained the names of 139 members, of whom 34 were Fellows, 103 were Associates, and two sub-Associates. During the year under review the roll was increased by the admission of two Associate members, and two gentlemen who were admitted to the grade of Sub-Associateship. Losses have been sustained by the resignation of Mr. W. J. Brook, who was thereupon appointed an honorary member, and the forfeiture of membership by a Fellow, who failed to pay his subscription. Mr. C. J. Bengetell's untimely death also lessened the number of the Associate members. The Council much regret the loss of Mr. W. J. Brook's active connection with the Institute, of which he was one of the original founders. They trust, however, that his connection as an honorary member will be of long duration.

(2) The scheme of joint examination, under the control of the Sydney Institute of Public Accountants, the Incorporated Institute of Accountants, Victoria, and this Institute, which was inaugurated in April 1899, terminated with the post examination held during April 1905. The Incorporated Institute of Accountants, Victoria, intimated that it was not their intention to co-operate in any effort likely to be made in the direction of a renewal of the scheme, even under altered conditions, and, though more than one effort was put forth by your Council to bring about a satisfactory compact, no arrangement whatsoever could be concluded with the governing body of that Institute. The Incorporated Institute of Accountants of

New Zealand intimated that they also were not prepared to continue the examination of their candidates under the conditions which had hitherto prevailed during their connection with the joint scheme. Under the altered circumstances a new scheme was adopted, to which the Sydney Institute of Public Accountants, the Tasmanian Institute of Accountants, the Institute of Accountants and Auditors of Western Australia (Incorporated), and this Institute are the present contracting parties. The principal alteration in the scheme consists in the constitution of the examining body, which now includes a representative from each of the affiliated Institutes, with an additional member chosen for purposes of adjusting differences of opinion. The present scheme has no apparent disadvantage, save that of considerably increased cost to the affiliated Institutes, and the danger is that such increase of cost may possibly tend to militate against its continuance. Your Council, however, deem it to be of the utmost importance that this Institute should strain every nerve to co-operate with kindred Associations, the common aim being to further the best interests of the profession by a consistent call for a high standard of proficiency on the part of those desirous of entering the profession.

(3) The Council tender their acknowledgments to those members of the Institute who were good enough to render valuable assistance as supervisors at the examinations held during the months of April and October 1905.

(4) The action of certain accountants in Victoria, in attempting to acquire the prestige and advantage of a Royal Charter, the jurisdiction of which was sought to be extended beyond the boundaries of that State, was deemed by your Council to be a matter calling for strong protest and opposition. Acting under legal advice a petition was sent to His Majesty the King, praying that no such Charter as sought should emanate from the Crown, and setting forth the undesirableness of such partial and one-sided recognition.

(5) The annual Statements of Accounts for the year, which ended on 31st December 1905, have been duly audited, as required by the regulations of the Institute, and are submitted herewith. The excess of expenditure over income during the year has been caused in part by outlays of a somewhat abnormal character, and by the increase in the expenses of examinations.

W. L. WARE,

*President.*

Adelaide,

12th February 1906.

[illegible]

Sundry Creditors .. .. .	£	s	d		£	s	d		Bank of Australasia—Fixed Deposit .. ..	£	s	d	£	s	d
Reserve to cover Depreciation of Office Furniture and Library .. .. .					63	11	6		Current Account.. ..	300	0	8			
Income and Expenditure—					88	8	1		Savings Bank of S. A. .. ..	12	7	0			
Surplus to 31st December 1904 .. .. .	488	8	11							89	2	6			
Deficit for year which ended on 31st December 1905 .. .. .		14	17	7					Library (at cost) .. .. .	204	8	3	401	10	12
					473	11	4		Office Furniture .. .. .	19	12	6			
													224	0	9
					£625	10	11						£625	10	11

W. S. ESAU, F.I.A.S.A.  
R. HOWARD TAPLEY, F.I.A.S.A.

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the members of any other profession, and that it is impossible for them to understand the workings of a business outside of the results of management as shown by the books. This objection is fundamental and must be carefully examined.

The lawyer, to be of any value to his client, must have a full knowledge of law applicable to the case presented, and past business interests have developed specialists in the law, whose fees are only governed by themselves, while still there is plenty to do for the great majority of the workers in that profession at fair remuneration. The physician must have a thorough knowledge of his patients' ailments, and how to alleviate them, but that profession has developed specialists whose fees are likewise of their own making, while yet there is room for the general practitioner whose services yield him a comfortable income. The engineer of exceptional ability, the man that can "do things," becomes the head of his profession, and the term "consulting engineer" means that you will pay his price for his services, and yet there is sufficient employment at remunerative prices for the general engineers. The fact that a professional man is a specialist in one branch of his profession does not mean that he is deficient in other branches—he must be a good practitioner—but that he is thoroughly conversant in one particular matter in all its possible bearings.

How does the accountant stand in respect to specialisation compared with other professions? It is granted that accountancy as an acknowledged profession is new, in fact it has hardly reached its legal teens; but since its recognition business interests have so changed, and so many new demands have been made upon the profession, that there is very little of its original outlines. The accountant who has not kept in touch with the requirements of the day finds his occupation gone, and wonders why clients drop him, as he is still positive that he is a first-class bookkeeper. The principal use of the accountant, or, rather, advanced bookkeeper, was formerly to straighten out tangled books, and detect thieving bookkeepers. All this has changed, however, and the business man, especially the man at the head of large enterprises, expects that the accountant should furnish him expert opinions as to the progress and status of his affairs.

A statement of earnings can be made out by any bookkeeper just as intelligently as by an accountant, but the statement of earnings only represents what one management has done, and the accountant should be in such touch with the business he examines that from his knowledge and experience he is able to tell his client what should be the result, and wherein the saving could be made. Comparisons of operating cost and income, from year to year or month to month, in showing increases or decreases of

the same or different managements, may be interesting reading, but is utterly worthless as to the capabilities of the company, consequently no great value for services can be demanded by the accountant unless he can show wherein savings can be made, which he can only do by a thorough knowledge of the business.

It would be folly to assert that the accountant has not proved himself of great value to the business community in the preparation of simplified forms, &c., which meet the requirements of business as they arise, but have they accepted the conditions demanded of their profession, or are they content to remain mere analysts of books, showing in complicated technical reports what some management has done, with no ability to tell what should have been done?

There can be no doubt that the want of knowledge of the needs of a business seriously interferes with the devising of systems of account. To illustrate: A certain large corporation employed the services of one of the brightest accountants in the profession to instal a cost system. He, after thoroughly going over all the works on accounting relative to the particular business in hand, and consulting with those who were supposed to be familiar with such matters, devised a beautiful system; that is, in theory it was absolutely perfect, but it failed to work. He had failed to provide for certain details, on account of his unfamiliarity with the details of the business, and these omissions made his system valueless, until these details were provided for. This could not have happened had our accountant been practically conversant with the business, and the frequency of these failures raise a doubt in the mind of the layman as to the status of the accountant, judging his professional standing by the results of his work.

The question may be asked, why is it necessary for an accountant to fully understand the business he is dealing with, as able men are placed in charge of a business who must know more about the matter than any accountant can possibly know or learn? This question implies ignorance of the characteristics of the average business manager. The prime factors in all enterprises are efficiency and economy. Efficiency without economy results in failure; and economy without efficiency, while it may not result in actual failure, so contracts a business that proper results cannot be obtained. The manager who combines these two qualifications is a rarity, a valuable and much sought after man, who can command his own price. This being admitted, it is not difficult to see the valuable aid that an accountant can give who understands how matters should be handled to produce the best results to the great majority of business enterprises. To the manager whose aim is efficiency to the neglect of economy, the accountant can show how efficiency is overdone, and to the manager whose strong point is economy he can show that small pay rolls,

or the working of worn-out machinery, is bad policy. The fact that all large undertakings have auditing departments, in which statistics covering the most minute details are carefully kept and scrutinised, is probably the best argument in favour of the claim made in this paper, and it may be a question whether the head of such a department may not with propriety claim to be a professional man, and entitled to be ranked among the highest class of accountants.

A few of the matters that should claim the special attention of the accountant are: Corporation Formation, Banking, Public Utility Companies, Municipal Accounting, and Manufacturing. Every accountant should select from these some particular calling and thoroughly cover it in detail, and thus become of far more value to his client than it is possible for him to be if his knowledge is confined to the accounting only. There are accountants' offices in which this has been successfully done, and with good results to both the works manager and the owners, as well as great benefit to the accountant.

In order to fit himself for the advanced practice of his profession, the accountant must first become thoroughly acquainted with the business, and should know the best results that have been obtained, and he should strive to get his client's business to that point. He must so formulate his classifications and reports that he will be enabled to detect wherein an improvement can be made. He must be in such accord with the manager, that his suggestions will command respect, and he will receive that respect if he can show he deserves it, and is working for the benefit of the manager as well as the owner.

It will probably be granted that no academic course can be more than preparatory, laying the foundation for further study and experience to complete, but if the academic course is supplemented by instruction as to the whys and wherefores of business, it will go much further in laying a broader foundation than the mere technical education as to methods of accounting. The English system of accounting instruction, covering years of study and practice in an accountant's office, covering accountancy and law to a large extent, will not fit men for the American profession if the American profession adopt the view of this article. They may be very proficient in the principles of accounting, and make out intricate reports in the best technique, but the office study does not fit them for the broad demands made on accountancy in the United States. Under new conditions accountancy in England is a secured profession, owing in a great measure to its invasion of the lawyer's field, but the American accountant, who has no such secured profession, must create his opportunities by fitting himself to grapple with the complicated problems which every business presents.

## Notes on Some Problems Relating to the Accounts of Holding Companies.

By ARTHUR LOWES DICKINSON, M.A., F.C.A., C.P.A.

CONSOLIDATIONS are frequently carried out by means of the formation of a holding company which purchases not the physical property of the concerns which it is proposed to consolidate, but the stocks of the corporations owning the various properties. This condition raises some questions of principle, the great importance of which is not fully realised at the present time either by the public or by a large number of the members of the accounting profession.

### *Working Capital.*

There will frequently be found in the agreements and contracts upon which the organisation of the holding company is based, a clause declaring that the stocks or properties purchased are of a certain value, and that in addition to turning over to the company these stocks and properties, the vendors will also provide a certain sum in cash for working capital. A common, and it would seem almost the usual, practice among the legal profession is to consider that the working capital so provided is a profit to the new corporation, and some authorities even go so far as to claim that if there were no earnings available from any other source it could be distributed by the holding company as a dividend on its capital stock. Inasmuch as profits can only result from the acquisition of commodities and their sale either in the same or an improved condition, it would seem fairly obvious that the new holding company could only make profits and declare dividends out of the earnings of its subsidiary companies accrued subsequent to the date of purchase, and that inasmuch as the working capital so provided by the vendors came either out of their own funds, or possibly out of the surplus accumulated before the date of the contract for sale by one or other of the purchased companies, this sum could not in any sense be profits, but must be considered as a reduction of the cost price of the properties, and should be so treated in the Balance Sheet of the holding company.

### *Dividends of Subsidiary Companies.*

It is clear that it is within the power of each of the subsidiary companies to declare dividends at such times as their directors may think fit and out of surplus in whatever period accumulated. The holding company has acquired the stock of these companies on a certain date, and this stock is represented by the surplus of assets over liabilities of the subsidiary company at that date. The only possible assumption is that the price paid for the

stock took into consideration its then value, and was made up therefore of the surplus of assets over liabilities at that date, together with such sum for goodwill as the purchasers might consider it worth. A declaration of a dividend out of assets existing at that date, although in the books of the subsidiary company those assets might be represented by surplus and not by any liability to the stockholders, is clearly a return to the holding company of a portion of the assets purchased, or, in other words, a return of part of the purchase-money; and other things being equal the stock of the subsidiary company owned by the holding company is by reason of that one transaction of a less value than it was by exactly the amount of dividends so distributed. It seems clear, therefore, although legal opinions have been given to the contrary, that the holding company is not entitled to consider dividends so distributed as part of its earnings, but must credit them in reduction of the cost of the stocks purchased.

#### *Consolidated Balance Sheet.*

The method of forming a new corporation by means of a holding company owning the stocks of other corporations, as described above, has called for a new form of Balance Sheet, which will clearly set forth at any time the conditions so created. It may be asked, wherein lies the difference between a corporation holding a large portion only of the stocks of other companies and a corporation owning the whole thereof, or such a substantial proportion that it practically controls the operations? The reason for the difference is, first—that the directors of the subsidiary company are necessarily the nominees of the holding company, and that consequently the whole group of subsidiary companies is in effect managed in exactly the same way as if they were integral parts of the organisation of the holding company without the legal fiction of separate companies. Then, again, where the control of all the companies is practically vested in the same board of directors, it is easy, and may be perfectly proper, for one company in the consolidation to loan money to another without security in a way which would be entirely improper if the companies were independent, and such loan, which would be treated as a current asset of the holding company, might be represented in the Balance Sheet of the subsidiary company by capital expenditures or even by losses, and is not therefore an available asset. Moreover, the publication of a Balance Sheet of the holding company by itself will not disclose the liabilities which subsidiary companies may have incurred to outsiders to large amounts for the preservation of the property of the holding company. In fact, it may be said that in such a case the maintenance in the books of the holding company of the stocks of the subsidiary companies at original cost is not correct, for the reason that the directors have a ready means in their

possession of adjusting these values to conform exactly to the results of the operations of subsidiary companies. Any appreciation or depreciation therein due to conditions entirely outside of the organisation should clearly not be taken into account for the reason that such can only be realised by an actual sale of the stocks or properties to parties outside; but any appreciation or depreciation due to operations within the group, or to profits or losses realised upon purchase from or sales to outsiders, must result, so far as these transactions are concerned, in a corresponding change in the values of the stocks owned by the holding company and should be reflected in its Balance Sheet. These stocks are represented in the subsidiary Balance Sheets by capital assets, and current assets diminished by capital and current liabilities; hence, if the Balance Sheet of the holding company is to show clearly the true position, these stocks should be divided in such manner as to show how much of them is represented by fixed or capital assets which cannot be realised without interfering with the operations of the whole group, how much represents fixed assets which can be sold if desired without interfering with the operations; how much is represented by current assets either necessary for the purpose of carrying on the business (such as inventories, accounts receivable, working cash balances, &c.) or available for immediate sale at any time (such as marketable stocks and bonds); and, lastly, by how much this total of assets is diminished by the liabilities that may have been incurred by any of the subsidiary companies in respect thereof. When the assets and liabilities so detailed have been segregated there will still remain a difference between the cost price in the books of the holding company of the stocks of the subsidiary company and the net total of the above assets and liabilities, and this will be represented—

- (1) By a debit of the excess above par paid by the holding company for the capital stock of the subsidiary company.
- (2) By a credit of the surplus earnings of the subsidiary company accrued prior to the date of purchase.
- (3) By a credit of the surplus earnings of the subsidiary company accrued subsequent to the date of purchase.

The first of these items represents the amount paid by the holding company for—

- (a) The surplus existing at the date of purchase by the holding company, and
- (b) The estimated value of the goodwill of the subsidiary company at the date of purchase.

Item (2), then, clearly is included in item (1) and should be deducted therefrom. Item (3) represents the true surplus accruing to the holding company out of the earnings since the date of consolidation.

It will be seen that the above analysis of the Investment Account of the holding company, if given effect to and spread on the Balance Sheet of that company, will give what is known as a consolidated Balance Sheet of all companies, provided that accounts due from one company to another in the consolidation are eliminated; so that in the result the consolidated Balance Sheet will show the actual position of the whole group of companies in their relations to stockholders, and to the general public outside the consolidation. It is submitted that no statement which does not so disclose the true facts is permissible or should be allowed by any public accountant to be put forth over his signature.

The following practical example will perhaps illustrate this point: A holding company owned the stocks of, say, ten subsidiary companies. The results of the operations of these ten companies for a complete year succeeding the date of consolidation resulted in a loss of \$1,000,000, no company having made a profit. In the same year two or more of the subsidiary companies had declared dividends to the amount of \$500,000 out of surplus existing prior to the consolidation, with the result that the books of the holding company at the close of the year, after charging expenses of \$100,000, showed a profit of \$400,000, out of which dividends to the amount of \$300,000 had been paid to its stockholders. At the close of the year the current assets of the holding company, consisting entirely of advances to subsidiary companies, amounted to, say, \$3,000,000, while the liabilities of the holding company, consisting partly of loans by subsidiary companies of \$500,000 and partly of ordinary current liabilities for interest, &c., of \$500,000, amounted to \$1,000,000. A Balance Sheet of the holding company prepared from its books, entirely ignoring its relations with subsidiary companies, and also the fact that earnings can only arise from profits on their operations, would show surplus earnings of \$100,000, and a surplus of current assets over current liabilities of \$2,000,000. On the other hand the subsidiary companies, in addition to the advances received from the parent company, had been borrowing money outside for construction purposes and to make good losses, with a result that their current liabilities of \$5,000,000 exceeded their current assets of \$2,000,000 by \$3,000,000, including advances to and by the holding company. If the whole group of Balance Sheets were consolidated into one statement the result would be that in place of surplus earnings of \$100,000 there would be a deficit of \$1,000,000, in addition to \$400,000 absorbed by the holding company in expenses and dividends, or a total deficit of \$1,400,000, and in place of a surplus of current assets over current liabilities of \$2,000,000 there would be an excess of current liabilities over current assets of \$1,000,000. There can be

no question that under the conditions here given a Balance Sheet of the holding company prepared without regard to the condition of the subsidiary companies would be entirely misleading to the stockholders and the public, and would state falsely both the earnings and the position of the company. These two conditions could only be truly set forth by submitting to the stockholders and public a properly drawn up consolidated Balance Sheet.

(*The Journal of Accountancy*, New York.)

## Forty Years since the Overend-Gurney Crash.

By C. DAWSON-PHILPOT.

ON May 10 forty years ago (and, curiously enough, on the same day of the week) began a panic affecting banks and other credit institutions which, for its disastrous and wide-spreading results, has never been equalled in this or any other country. On the Thursday afternoon on that date the great firm of Overend, Gurney & Co., bill brokers and discount bankers, closed their doors with liabilities amounting to £20,000,000, and thus commenced a process of liquidation the completion of which was announced in *The Financial News* of November 16 1893. On May 11 (Friday), known as "Black Friday," there was a general bank panic, depositors rushing to all the banks, without exception, to withdraw their balances and deposits. I shall never forget the sight on that day; no wheeled traffic was possible in Lombard Street, everyone pushing and struggling to get into the banks. Many, having drawn their money, were relieved from the trouble of carrying it home by the numerous thieves who were waiting on them.

The two banks which were singled out particularly for attack were the London and County Bank and that of Messrs. Barnett, Hoares & Co., both having their offices in Lombard Street. They stood manfully to their guns, paying out all day as fast as their cashiers could work, and when 4 o'clock (closing time) was approaching the manager of the London and County came out on to the steps of the bank and announced that the directors would keep their doors open and continue payments up till 8 o'clock, if necessary. This had a good effect, as far as that bank was concerned; but the attack on the other banks continued. Barnett-Hoares suffered especially through the relationship of some members of their firm to some of the partners of Overend, Gurney & Co., and during the rush on Barnetts it was related that a grateful client, who had been greatly assisted by the bank to make the fortune he had acquired, sold out £100,000 of Consols for cash and ostentatiously



paid that amount in to his credit in notes, saying "I shall be paying in some more to-morrow." It is said that that action completely stopped the run on the bank, at all events for the day. The incident has been transferred to a Tewkesbury bank, and there used by the authoress of "John Halifax, Gentleman."

The English Joint Stock Bank, founded only two years before by the amalgamation of the West Surrey Bank of Mangles Brothers, Hart, Fellowes & Co., Nottingham, and other country private banks, and also the London banking house of Roger Olding & Co., Clement's Lane, with 36 branches, did not open its doors on Friday morning, and failed for upwards of £1,000,000. This was followed, shortly after, by the stoppage of the Bank of London and the Consolidated Bank, the private bank of Messrs. Price & Co., King William Street, City, and that of Messrs. Puget, Bainbridge & Co., St. Paul's Churchyard. Rumours were set afloat affecting the credit of the Agra and Masterman's Bank, an amalgamation, a few years previously, of Messrs. Masterman, Peters, Mildred & Co., of Nicholas Lane, and the Agra and United Service Bank. The statements that they were hung up by advances on produce warrants connected with the East—such as tea, coffee, jute, and other commodities—proved only too true, and this bank closed its doors and added to the general distrust. The failure, at this time, also took place of the Bank of Hindustan, China, and Japan, with extensive liabilities, and, being in intimate relations with the Alliance Bank of London and Liverpool, this affair caused great loss to the latter bank.

The shares of several other banks were attacked by bear selling, either through spite or antagonistic interests, and this gave rise to the Act passed through the energy and public spirit of Mr. Leeman, M.P. for York, which enacts that no sale of bank shares can be made without specifying the distinctive numbers of the shares sold. It is known as Leeman's Act. At this time the Bank rate was 10 per cent., and 12 per cent. was charged by the banks (who were able to discount at all) for the best bank remittance paper. The Bank of England could not make advances, even on Consols, their limit of note issue having been reached, and the stock of bullion was down to danger point. A Cabinet Council was hastily summoned, with the result that the late Mr. Gladstone (Chancellor of the Exchequer) came down to the Bank of England with a mandate from the Government suspending the Bank Act of 1844 (limiting the issue of notes), and this had the effect of relieving the pressure. The Three per Cent. Consols, which had fallen to 85, began to improve slightly, and the worst seemed to be over. Such was the financial exhaustion that literally no business was done for the rest of the year, and, the bonded warehouses being full to overflowing

with produce, few imports were recorded, with the result that in January 1867 the Bank rate had fallen to 1½ per cent., with money almost unobtainable.

During the height of the panic various schemes were resorted to by the managers of what were then known as the five great joint-stock banks of London; meetings were held, attended by the representatives of each of these banks, after office hours, and figures compared, and it was found that in most cases withdrawals from one bank had been deposited with another, and it was agreed that they should unite for mutual help, so that the money withdrawn from one bank singled out for attack should be handed back to it as an advance till, perhaps in a few days, the balance would turn the other way, and the helped became the helper. Other means were resorted to to supply the banks with sufficient notes for their tills by the Bank of England. It is well known that every bank and banker in London keeps an account with the Bank of England for clearing purposes, and the Bank allowed their *confrères* to draw what notes they required for the day at 9 o'clock in the morning, even in excess of their authorised note issue, on the understanding that all that were not used should be brought back and paid in directly after 4 o'clock, the Bank of England keeping their books open for the purpose. Of course, the necessity for this was obviated as soon as the Bank Act was suspended by the Government.

We must, however, look deeper for the cause of this upheaval in the finances of the country than the simple distrust of the banks and credit companies which then existed. The real cause of the panic was over-production, gambling in futures, aided by the banks, the establishment of new banks which were not required, and without solid bases, palatial hotels in some localities which were large enough to accommodate the whole of the inhabitants of the towns they were intended to serve, and other schemes of every conceivable sort. The shares of all these innumerable and fanciful schemes were quoted at a substantial premium before allotment; the shares were of £5 or over (the £1 share was not known then), not more than £2 or £2 10s. was to be called up on allotment, and the premium hunters rushed in, only to find that after they had got their shares the premium had disappeared, and the shares were unsaleable even at 5s., and a liability for calls facing them. If the public attempted a bear raid they found all the shares had been pooled by the promoter and directors, and, of course, the public were bitten that way, by having to buy back in the market at an enormous premium, quite out of proportion to any merits the company might possess.

This mad speculation began some time in 1863, and continued with increasing intensity during 1864, and especially during the closing months of 1865, culminating, as I have described, in May 1866. It was wonderful, however, how

quickly the country then appeared to recover its wonted prosperity, as in 1868 the effects seemed to have wholly disappeared. I have often wondered, with that recollection in my mind, why the disastrous effects of the Boer War of 1899-1901 and the slump in prices of the South African mining and finance shares, caused, as in 1865-66, by over-inflation in prices, has now continued for seven years, and recovery seems as far off as ever. A large number of new banks sprang into life during this period, many of which had only a short existence. Most of them went into liquidation, and the remainder merged their identity into other banks.

#### MR. MACLEOD'S ACCOUNT.

We take the following supplementary details from the well-known work on "Banking," by Mr. Macleod: "Towards the end of January the difficulties began. The first company that went was the Joint Stock Discount Company, in February. This spread a general feeling of alarm, as the doings of this company were merely a type of a large amount of business which was known to have been engaged in by numerous other companies. In March, Barned's Bank, at Liverpool, stopped payment, with liabilities of upwards of £3,500,000. Several great railway contractors suspended, involving in discredit the companies with whom they were known to have financed.

"On May 3 the Bank raised its discount to 7 per cent. Everyone now felt that the long-dreaded crisis had at last come. The air was thick with rumours. Everyone knew now that it was merely a question of weeks—perhaps of days—when the storm should burst. On May 8 the Bank raised its discount to 8 per cent. . . . It is possible that the excitement might have passed off, as the Bank had a fair reserve in the banking department and abundance of bullion in the issue department. On May 9 the Bank raised the rate to 9 per cent. On this day, however, occurred the event which, it is probable, produced the great panic. The Mid-Wales Railway Company had accepted bills of exchange to the amount of £60,000, which were held by three parties—Bateman, Overend, Gurney & Co., and the National Discount Company. The company had dishonoured the bills, and actions had been brought against it by the three parties above named. As ill-fortune would have it, judgment in these actions was delivered on May 9, in the very height of the excitement. The Court of Common Pleas held unanimously that the railway company had no authority whatever to accept such bills, and, consequently, that they were invalid, and so much waste paper.

"For some time back it was known that Overend, Gurney & Co. were very deep in with contractors and other

parties; moreover, they held forged bills of another firm to a large extent. Their shares had been pressed on the market, and were going down. This fall in their shares produced a steady withdrawal in their deposits. The judgment in the case of the Mid-Wales Railway converted this into a complete run, and on the afternoon of Thursday, May 10, the terrible news spread through London that the great establishment had stopped payment—the most stupendous failure that had ever taken place in the City. This news only spread about after banking hours; but everyone could see what the effects would be the next morning. The Chancellor of the Exchequer said in the House that the oldest inhabitant in the City declared that the excitement was without a parallel.

"The announcement of the suspension of the Bank Charter Act produced the best effects the next morning. The Bank raised its rate to 10 per cent., and everything calmed down; and though, subsequently, some other stoppages took place, yet the knowledge that the Bank had power to make advances on good securities abated the panic. On May 18 the Chancellor of the Exchequer stated that the Bank had advanced £12,225,000 in five days. The sum that was paid away during the panic can probably never be known; but it was something perfectly fabulous. It has been said that one great bank alone paid away £2,000,000 in six hours. The establishments that stopped payment were as follow:—

	Paid-up Capital	Reserve	Liabilities
	£	£	£
Overend, Gurney & Co. ..	1,500,000	..	11,000,000
English Joint Stock Bank ..	150,000	6,000	800,000
Oriental Commercial Bank ..	375,000	49,500	..
N. Z. Banking Corporation ..	80,000	16,000	136,000
Hallet, Ommauney & Co. ..	..	..	238,000
Imperial Mercantile Credit ..	500,000	..	not stated
Commercial Bank of India ..	1,000,000	238,802	..
European Bank ..	644,490	31,393	2,112,838
Robinson, Ceryton & Co. ..	..	..	..
Alliance Financial Co. ..	20,000	..	..
Bank of London ..	400,000	302,324	4,335,877
Consolidated Bank ..	600,000	71,808	3,817,999
Agra & Masterman's ..	1,500,000	500,000	15,582,002

"The liabilities given above were according to the last published Balance Sheets, though they were greatly diminished during the panic. Besides these stoppages, several other banks connected with the East confessed to enormous losses. Thus, the Bank of Hindostan, China, and Japan stated its profits at £23,485 and its losses at £87,796, with a further expected loss of £70,000; the Asiatic Banking Company stated its profits at £61,494 and its losses at £142,000; the Bank of Queensland stated its profits at £10,173 and its losses at £42,071. What losses the other banks sustained we have no means of knowing, though they were probably heavy."

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, May 11th, was 161, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 82; Deeds of Arrangement registered, 79. The respective numbers in the corresponding week of last year were: Bankruptcies, 79; Deeds of Arrangement, 82—total, 161; being no alteration. The total number of commercial failures recorded during the 19 weeks of the present year is 3,153; the total number recorded in the corresponding 19 weeks of last year was 3,416, showing a decrease of 263.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, May 11th, was 137. The number in the corresponding week of last year was 145, showing a decrease of 8. The total number filed during the 19 weeks of the present year is 2,894; the total number filed in the corresponding 19 weeks of last year was 3,215, showing a decrease of 321.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, May 11th, amounted to £2,386,234, by way of addition to £1,011,220, previously issued by the same companies. The amount registered in the corresponding week of last year was £573,166 showing an increase of £1,813,068. The total amount registered during the 19 weeks of the present year was £31,778,099 (in addition to the issues in previous years by the same companies), as compared with £28,648,540 for the corresponding 19 weeks in 1905, showing an increase of £3,129,559.

## The Profession in Scotland.

### Society of Accountants in Aberdeen.

At a special general meeting of the Society of Accountants in Aberdeen, held within the offices of the Society, 6 Golden Square, Aberdeen, on Wednesday last, Mr. James Milne, C.A., presiding, the following gentlemen were

unanimously admitted members of the Society—namely, Mr. J. G. Slessor, late apprentice to Mr. Harvey Hall, C.A., and Mr. A. H. Maclear, late apprentice to Messrs. James Meston & Co., C.A., 31 Walbrook, London, E.C.

### Bank Rate of Discount.

April 14th 1904	..	..	..	..	..	..	3½%
„ 21st	„	..	..	..	..	..	3%
March 9th 1905	..	..	..	..	..	..	2½%
Sept. 7th	„	..	..	..	..	..	3%
„ 28th	„	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	..	3½%
May 4th	„	..	..	..	..	..	4%

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## Leading Articles.

### Local Authorities and Secret Reserves.

THE long awaited Report of the Committee appointed by the East Ham Corporation to deal with the Local Government Board Auditor's criticisms of the district's finances generally and the so-called Secret Trust Fund has at length been issued, and in another column we reproduce so much thereof as has appeared in the columns of *The Municipal Journal*.

Before dealing with this Report we should like to enter our protest against the way in which discussion of this question has been stopped. Some of our contemporaries in an ill-advised moment published extracts from the District Auditor's Report, and, acting upon the not unreasonable assumption that the published report of a Government official was matter of sufficient public interest

to render any legitimate comment thereon a privileged communication, proceeded to discuss and to express their views upon its contents. Certain proceedings were in consequence instituted for libel, and the whole matter was thus placed *sub judice*, and further discussion thereof upon its merits would have been a contempt of Court. We express no opinion whatever upon the unreasonableness of the comments that may have been made by others, but we should have thought that all concerned would have courted every possible inquiry and discussion, rather than such discussion should have been rendered impossible until the whole matter had become more or less ancient history.

So far as we ourselves are concerned, we do not propose after this lapse of time to deal with the whole matter item by item and attempt to arrive at any general conclusion as to whether or not the Report of the District Auditor was justified by the facts then at his disposal; for doubtless the matter will not rest at its present stage, and therefore any such expression of opinion would, we think, even yet be premature. The point, however, which strikes us as being of the most general interest, and as being of the most general application, is as to whether under any conceivable circumstances a local authority is justified in establishing a Secret Reserve; and, if so, what sort of payments it is justified in making out of the reserve so established.

Until this problem presented itself we must confess that we had not altogether grasped the significance of the distinction between the Receipts and Payments system of accounting and the Revenue basis as applied to local authorities, and we very much question

whether that significance had been duly appreciated by the Local Government Board. If it had, we can well understand its reluctance to substitute the latter system for the former, although its attitude upon the question would have been far better understood had its reasons been given. Under the Receipts and Payments system it is perfectly clear that if any moneys be received which are not included in the accounts, or if any items are stated as payments which do not represent payments in fact, but merely transfers through a Secret Reserve, accounts so compiled would be *false*, and could by no possibility be defended as full and complete statements of fact. Upon the Revenue system, however, many items are necessarily taken credit for as income which have not yet been actually received in cash; and in the case of those items concerning which there is any doubt as to whether they will eventually be so received or not there must necessarily be some discretion imposed with the accounting parties as to whether these uncertain items ought to be included. Similarly with regard to the expenditure which no longer represents actual payments, but an estimate of all payments or losses that may occur over an extended period, equitably apportioned so that the current period may bear its due share of the burden, there is again legitimate scope for differences of opinion and differences of treatment. The system not merely lends itself to the creation of reserves, but necessitates their creation in the great majority of cases. With accounts kept upon this system it is always extremely difficult, and often impossible, to draw a hard and fast line between what is a legitimate reserve properly required to enable the finances of the undertaking to be stated upon a prudent basis, and

what is an improper manipulation of the accounts undertaken partly with a view to providing for expenditure the full particulars of which it is not desired to disclose.

Whatever may be the merits of the East Ham controversy it has at least brought to light the fact, previously overlooked, that by abandoning the Cash system the Local Government Board has opened the door to the creation of Secret Reserves—which, although admittedly sometimes legitimate, and even advantageous, are an indisputable opening to abuse. The accounts published by undertakings which keep Secret Reserves are not the accounts of those undertakings at all, but merely a selection of those items in the accounts which the accounting parties think it desirable to make public. In the case of certain commercial undertakings the shareholders may have sufficient confidence in their directors to be willing to put up with this qualified disclosure of facts, but with local authorities it is, we think, another matter, in that such accounts are entirely valueless unless both the ability and the *bona fides* of the accounting parties are beyond question, and under those circumstances any form of published accounts seems superfluous. It is not, of course, to be supposed that we are for one moment advocating a reversion to the Receipts and Payments system, which is clearly quite inadequate to meet latter-day requirements, and incidentally possesses certain distinct disadvantages of its own. But if the creation and manipulation of Secret Reserves is to be discouraged, it is, we think, essential that, in addition to the Revenue Account, local authorities should be required to in all cases publish full and complete statements of their receipts and payments in sufficient detail to

make it impossible for any items to be excluded from publication save by deliberate falsification of the books. If the published accounts are to serve any useful purpose it is to enable ratepayers to judge for themselves as to the manner in which the finances of their locality are being administered by their elected representatives. If they fail to serve this purpose they are worse than useless, in that an inaccurate or incomplete statement of the position is necessarily more misleading than the withholding of all information with regard thereto.

---

### What is a Partial Audit?

---

IN our Law Reports this week we give a full account of the case of *Smith v. Sheard*, which—after a hearing extending over three days—was decided by Mr. Justice BRAY and a special jury at the Liverpool Assizes on the 11th inst., and which raises some questions of considerable professional interest, wholly irrespective of the somewhat startling finding of the jury.

So far as can be gathered from our report, for which we are indebted to the *Liverpool Courier*, it appears that in 1902 the partnership formerly subsisting between the plaintiff (Mrs. MARY ANN SMITH) and a Mr. DICKINSON had been dissolved, that the plaintiff then had occasion to consult her creditors, and that they agreed to give her time to pay the debts connected with the business on condition that Mr. FOSBROOKE, the partner of the defendant (Mr. THEODORE S. SHEARD, A.C.A.), continued to have charge of the books. As to what exactly was comprised in this arrangement is a little vague in the available reports, but, as his Lordship stated in the course of his summing

up, it was vital to see what work the defendant did before the arrangement with Mrs. SMITH, and there was not the shadow of a doubt—although it was for the jury to decide—that before that time the defendant was not employed to audit the books, and never did audit them.

In December 1902 the plaintiff's cashier, who has since been prosecuted and is now dead, appears to have made fictitious entries in the books, and to have appropriated money belonging to his employers, and the present action was brought by Mrs. SMITH for damages for neglect and carelessness on the part of the defendant in the audit of her books, by means of which she incurred heavy losses consequent on frauds. The defence was that the defendant had never been employed to audit the books, and in point of fact had never done so, but that his investigation was limited to the preparation from the books of periodical statements of account for the information of creditors. It was admitted, however, that the word "audit" had inadvertently been used in a statement of account rendered by the defendant to the plaintiff in respect of his charges in the matter. At the same time the evidence showed that the defendant had never given an audit certificate, nor had he signed the various periodical accounts.

So far as can be judged from the report before us it would certainly appear that Mr. SHEARD's employment was limited to the preparation from the books of account of such periodical statements as might be required by the creditors from time to time to satisfy themselves that the business was proceeding satisfactorily. Without attaching too much importance to the absence of any form of certificate as to the

accuracy of the accounts signed by the defendant, it seems to us perfectly reasonable that from this limited point of view all that seems to have been required was the production of periodical Balance Sheets showing the then existing position of affairs. If these Balance Sheets recorded the true facts, after deducting the losses arising through the dishonesty of the late cashier, it seems difficult in the extreme to find any evidence of negligence on the part of the defendant. If, on the other hand, the assets shown by these Balance Sheets included (say) debts which were no longer owing to the business, inasmuch as they had been collected by the cashier and the proceeds embezzled, the position would undoubtedly be less clear.

It may be pointed out, however, at this stage that, as was shown in the case of *The London Oil Storage Company, Lim. v. Seear, Hasluck & Co.*, something very much stronger than the combination of an audit which failed to disclose dishonesty, and the fact that losses had been sustained as a result of such dishonesty, is necessary in order to saddle the auditor with the full consequences of his failure to detect without delay such losses as may have been sustained or such falsifications of account as may have been perpetrated. His Lordship's summing up seems to follow these lines, and is, we think, as clearly in favour of the defendant as would be possible, consistent with judicial impartiality.

Notwithstanding, however, the clear lead given to the jury by Mr. Justice BRAY, that body, after an abortive finding which his Lordship refused to accept, ultimately returned a verdict in favour of the plaintiff, and we understand that it was arranged that the question of damages should be referred to an assessor. While entirely agreeing that this is a far more

satisfactory way of arriving at an equitable figure than relying upon some haphazard finding of a jury, it is, we think, to be regretted, inasmuch as it appears to indicate an acceptance of the verdict by the defendant, whereas, unless the report before us errs greatly, there would appear to be strong ground for applying for a new trial.

The point upon which it seems to us that this decision in *Smith v. Sheard* is so eminently unsatisfactory is that, if it means anything at all, it seems to amount to a finding that an auditor may be made responsible for the literal accuracy of figures put together by him, notwithstanding the fact that by refraining from signing or certifying those figures he has clearly done everything in his power, short of expressly stating that he does not believe them to be accurate, to avoid putting them forward upon his own responsibility. Moreover, it seems almost impossible to avoid the conclusion that the jury accepted the extraordinary statement made by Mr. ARTHUR WHITTAKER, A.C.A., in the course of his evidence, that he did not think there was any difference between a partial audit and a complete audit. These words taken literally may be unexceptionable, but taken in their context, as reported, suggest that it was intended to assert that all audits are alike, and that the liabilities in respect of a partial audit are exactly the same as the liabilities in connection with a complete audit—an assertion which we have no hesitation in saying is indefensible. So far as the audit of the accounts of private individuals is concerned, the question is entirely one of contract between the parties, and the term as such has, we think, no definite and invariable meaning.

We, for our part, should be prepared to argue that the responsibility of the accountant in such matters is limited to the proper performance of those duties which he undertook, and that it must in all cases be a question of fact as to what duties were, and were not, comprised under the arrangement which is described by the term "audit." The defendant's case here, however, was, it seems to us, far stronger than this, in that we can discover no evidence that he ever undertook to audit the accounts save the use of the word "audit" in a bill of charges; moreover, the most definite evidence upon the point at issue was, it seems to us, that given by Mr. FOSBROOKE, who stated that in August 1904, when the plaintiff had got clear of her creditors, she asked him what a complete audit would cost, and that he then quoted a fee for such audit. It is difficult to imagine that anyone who believed that their accounts were at the present time being submitted to a complete audit would inquire what the fee for such an audit would be, and under these circumstances the finding of the jury that there was in 1902 an agreement for a complete audit can, we think, only be described as incomprehensible. We trust that the case will receive that attention at the hands of our readers which its importance demands, and that such steps will be taken as may seem necessary to avoid the perpetuation of so undesirable and unreasonable a precedent.

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#### Accountants' Certificates in Prospectuses.

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IT has been frequently pointed out, both in these columns and by various successive Presidents of the Institute, that certificates or reports furnished by members of the profession



for inclusion in a prospectus inviting subscriptions of capital, ought in all cases to be carefully confined to statements of existing or past facts, and should in no cases attempt to forecast the future. There can at the present time, we imagine, be no difference of opinion among responsible members of the profession upon so elementary a point as this, but from time to time our attention is directed to prospectuses which include so-called "certificates" signed by professional accountants which infringe this somewhat important rule.

As a case in point we instance the following, which appeared in a prospectus recently issued:—

———— 1906.

To the Directors of the ——— Company.

Gentlemen,—I have perused the Report on your property at Goudhurst, Kent, made by Mr. ———, A.M.I.C.E., M.I.M.E., in which he states that the extent of the area to be covered within certain neighbouring districts should result in the sale of over 50,000,000 cubic feet of gas per annum. Upon this basis, and taking the price at present received for your supply of gas, viz., 5s. per 1,000 cubic feet, and calculating the sales of coke, tar, residuals, &c., at current market prices, I certify that the profits should be as follows:—

	£	s	d
By Sale of 50,000,000 Cubic Feet of Gas at 5s. per 1,000	12,500	0	0
“ “ Coke, Tar, and Residuals, including Meter Rentals .. .. .	2,520	0	0
<b>Less—</b>	15,020	0	0
Cost of Coal for 50,000,000 Cubic Feet of Gas and Purification.. .. .	£5,166	13	4
Repairs, Renewals, Services to Mains, &c., 6d. per 1,000 Cubic Feet .. .. .	1,250	0	0
Directors' Fees, Wages, Cartage, and Miscellaneous Expenses .. .. .	1,750	0	0
	8,166	13	4
Leaving a Total Net Profit of .. .. .	£6,853	6	8

I am, Gentlemen, yours truly,

————, Chartered Accountant.

	£	s	d
The Net Profit as per above Certificate .. .. .	6,853	6	8
To pay 6 per cent. on 6,000 Preference Shares will absorb .. .. .	£1,800	0	0
To pay 14 per cent. on 4,000 Ordinary Shares will absorb .. .. .	2,800	0	0
	4,600	0	0
Leaving a Surplus, available for further Dividends on the Ordinary Shares and Reserve Fund .. .. .	£2,253	6	8

It will be seen that the figures comprised in

the above so-called certificate represent mere calculations which any ordinarily intelligent office-boy could perform, assuming the correctness of the data supplied by the Engineer referred to, which data have, so far as can be gathered, been accepted without question, and have certainly been accepted without any definite reasons for so doing being stated. Assuming that fifty million cubic feet of gas are sold per annum, and that the company is able to sell them at 5s. per thousand, and to obtain the current market prices for its residual products, it is a mere matter of arithmetic whether or not it will in consequence make a total net profit of £6,853 6s. 8d. There is nothing in such a calculation that requires the assistance of a Chartered Accountant, and equally there is nothing to which it is desirable that the signature of a Chartered Accountant should be attached to, inasmuch as there is considerable danger that the investing public (which never examines into such matters very closely) may think that that which we have quoted above is a certificate as to profits, which it certainly is not. This impression is rendered the more reasonable by the calculation which follows as to how much dividends might be paid upon the preference and ordinary shares out of the net profit "as per above certificate," and a little further down in the prospectus appears the statement:— "The profits, as shown by the above "Chartered Accountant's certificate, should be "sufficient, after making ample provision for "administration and other expenses, to pay "the full dividend on the preference shares, as "well as 14 per cent. upon the ordinary shares, "and then leave a large surplus for a Reserve "Fund, &c."

These statements are liable to mislead the

unwary investor, inasmuch as they are likely to suggest to him that an accountant, after making such an investigation of books and accounts as it is proper and usual for accountants to make before giving a certificate as to profits, has found as a matter of fact, and certified as to, profits in such a manner as to leave it beyond question that there will be sufficient profits to pay the preference dividend and some 14 per cent. per annum on the ordinary shares as well. It is not our custom to prophesy as to the future success of new undertakings, and we therefore refrain from expressing any opinion whatever as to the probable future of this gas company. We have, however, no hesitation in stating that at this stage of its career there is absolutely nothing upon which a professional accountant can usefully formulate a certificate for the purposes of a prospectus. There is, so far as we are aware, nothing in the least improper in an engineer making estimates—and, indeed, that is part of his legitimate work. If he be competent, he is perfectly well able to make all reasonable calculations for himself without the assistance of any Chartered Accountant, and figures as to future profits appearing in an Engineer's estimate would appear for what they are, and be liable to no misunderstanding. When, however, similar figures appear in what is expressly stated to be a Chartered Accountant's certificate, the position is altogether different; and such procedure has been officially condemned over and over again by the Institute.

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### Weekly Notes.

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#### Street Betting Bill and the Stock Exchange.

It is reported that some of the members of the Stock Exchange are rather nervous with regard to the Street Betting Bill, the text of which has just been published.

*The Financial News* says that the question turns on the precise sense of the word "wagering." If this word is to be limited by the previous word "betting" so as to mean the species "wagering" of the genus "betting" then probably street transactions in stocks and shares will not fall within the provisions of the Bill. On the other hand, it is said that if this doctrine does not apply, street transactions in stocks and shares would be within the contemplated Act if there was no intention on the part of the persons transacting business to give or take any actual delivery of the stock. In other words, gambling for differences would be penalised. The reference to "court" and "alley" in Sub-section 4 of Section 1 would seem, it is said, that the promoters of the Bill have their eyes on the Stock Exchange. We give the text of the Bill below, and it will be interesting to note its progress and application:—

1.—(1) Any person frequenting any street, public park, or garden, on behalf either of himself or of any other person, for the purpose of bookmaking, or betting, or wagering, or agreeing to bet or wager, or paying or receiving or settling bets, shall

- (a) In the case of a first offence be liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding £10;
- (b) In the case of a second offence be liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding £20; and
- (c) In the case of a third or subsequent offence, or in any case where it is proved that the person whilst committing the offence had any betting transaction with a person under the age of sixteen years, be liable on conviction on indictment to a fine not exceeding £50 or to imprisonment, with or without hard labour, for a term not exceeding six months, without the option of a fine, or on conviction under the Summary Jurisdiction Acts to a fine not exceeding £30, or to imprisonment, with or without hard labour, for a term not exceeding three months, without the option of a fine:

and shall in any case be liable to forfeit all books, cards, papers, and other articles relating to betting which may be found in his possession.

(2) Any constable may take into custody without warrant any person found committing an offence under this Act, and may seize and detain any article liable to be forfeited under this Act.

(3) Any person who appears to the Court to be under the age of sixteen years shall for the purpose of this section be deemed to be under that age unless the contrary be proved.

(4) For the purpose of this section the word "street" shall include any highway, public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not.

**Indemnities  
and the  
Stamp Act.**

A financial contemporary says that there is an impression prevailing that all indemnities require a sixpenny stamp.

This idea is supported by a reference to Volume XXIV. of the *Stock Exchange Official Intelligence*, on p. 1,939 of which, under the heading of Indemnities, the stamp duty is quoted at sixpence. It is pointed out, however, that the amount depends altogether upon whether the subject-matter is of the value of £5 or not. The Stamp Acts do not recognise the specific word "indemnity," but it is included in the terms "agreement" or "memorandum of agreement." As many dividend warrants must be under the value of £5, it is said that the statement in the volume referred to requires some modification in order that secretaries of public companies may not be led into the error of taxing even shareholders, careless or unlucky enough to lose their warrants, on an indemnity involving a sum under that figure.

**Gold Reserves.**

At the present moment it seems as if the question of Gold Reserves is pre-eminently important. The Chancellor of the Exchequer dealt with it recently in his speech at the bankers' dinner, and every other notability loses no opportunity of dragging in the subject on all and sundry occasions. Unfortunately, all that has been done up to the present is to prove that most of the schemes put forward are either no good or actually harmful. It is suggested that the best arrangement would be for the matter to be referred to either a Commission or a strong Committee. In any case, the matter is of very great importance to commercial circles, and it is to be hoped that it will sooner or later receive the serious consideration of those best competent to discuss it.

**Trust Companies' Reserves.**

The Bill regulating the reserves of trust companies of New York State has been signed by the Governor. The Bill originally required that trust companies should maintain a reserve of at least 15 per cent. of their deposits, of which 5 per cent. was to be in cash, 5 per cent. in bonds of the United States or bonds of the State of New

York, and 5 per cent. on deposit with other banking institutions. During its passage through the Senate, however, an amendment was carried to permit of the investment of that part of the reserves which is allowed to be kept in bonds of first and second class cities, and it was also provided that trusts having their principal place of business outside New York city should not be required to keep more than 10 per cent. in the prescribed proportions. The Act does not come into full effect immediately, and the result of the regulation is that the financial trusts will have to hold 2 per cent. in cash until the 1st July, 3 per cent. until 1st October, 4 per cent. until 1st January 1907, and 5 per cent. thereafter. This has probably been arranged to avoid the reform coming into full effect when money is scarce. It is generally understood that these trusts carry about 2½ per cent. of cash against their deposits, so that the immediate change will not be felt. As conditions become more stringent in the New York money market the sliding scale may have a very considerable effect, and the importance of the matter should by no means be lost sight of.

**Night and Day  
Bank.**

The *New York Times* reports that five minutes after the opening of this new bank for business \$500,000 had been deposited, one man having waited from 9 a.m. to 6 p.m. so that he might be the first to lodge a deposit. Altogether, it appears that the new institution is likely to succeed, at first on the score of novelty, and subsequently probably on account of its real value.

**Mr. Carnegie and  
Graduated  
Taxes.**

A Philadelphia contemporary states that Mr. Andrew Carnegie is very much in favour of graduated taxes upon large estates, and so long ago as 1889 he advocated this policy. He declared that men who continued hoarding great sums all their lives, the proper use of which for public acts would work good to the community from which they chiefly came, should be made to feel that the community, in the shape of the State, could not thus be deprived of its proper share. It was desirable that nations should go much further in the direction of graduated taxes, and in his opinion it was difficult to set bounds to the share of the rich man's estate which should go at his death to the public through the agency of the State. Mr. Carnegie contends that such a policy would work powerfully to

induce the rich man to attend to the proper administration of wealth during his life.

**Advertising Accountants and Trade Protection Associations.** A correspondent has forwarded to us a circular which emanates from the offices of a so-called Protection Association, and which, we gather, has been issued to tradesmen and others with a view to securing their support for the accountants of the association as trustees in connection with any bankruptcies or deeds of assignment in which they may be interested. The inducements put forward do not include any recital of the writers' qualifications or experience, or other suitability for the post of trustee, but reliance is apparently placed upon the offer that they will be prepared to act as trustees in any case of insolvency without any fee or remuneration whatever. We are left, however, to guess whether this offer is made from a purely philanthropic point of view, or whether the writers propose to endeavour to make a living out of such trusteeships, and, if so, by what indirect means they propose to do so.

**The Money-Lenders' Act and "One-Man" Companies.** The question as to whether a money-lender can evade the provisions of the Act requiring him to trade in the same registered name at all addresses where he carries on business by registering a separate "one-man" company under a different name in respect of each branch has yet to be decided, but while the decision of the House of Lords in *Broderip v. Salomon* stands, there would certainly appear to be but little difficulty in thus evading one of the most important—if not the most important—of the safeguards provided by that measure. But however that may be, it is satisfactory to observe that the Law Society does not always appear to view with favour solicitors who associate themselves too closely with such matters, and in a recent case where it was reported that a solicitor who had been found to be aware of a money-lender's operations upon the scale indicated, and to have assisted him by advising borrowers against whom he had issued writs in the name of one company to apply to another for accommodation without disclosing to the borrower the connection between the two companies, had been guilty of professional misconduct. It is perhaps even more satisfactory to note that the Divisional Court took the same view, and that the solicitor whose conduct was the subject of the inquiry has been suspended for three years.

**"Not Negotiable."** With reference to the correspondence that has appeared under the above heading in our recent issues, and particularly the letter signed "F.C.A." which we reproduced last week, we may point out, quite apart from what our Legal Contributor may have to say, that under the Bills of Exchange Act, 1882, the special statutory significance which is invested in the words "not negotiable" is confined to their use to a crossed cheque. The words, therefore, appearing at the top of an uncrossed postal order cannot possess this statutory significance, and such meaning as they may have must be acquired quite independently of the Act of 1882. Our own view is that they are employed with the view to discourage the negotiability of postal orders, which, however, are, we believe, never negotiable instruments, but the precise legal value of the qualification (or caution, as we prefer to call it) is, we think, somewhat doubtful.

**Income Tax.—Married Women.** In reply to the question asked by our correspondent "Tax" last week, the circumstances under which a husband and wife are entitled to be assessed separately require *inter alia* that the Commissioners for General Purposes be satisfied that the income earned by the husband be "unconnected with the business of the wife." It is thus a matter for the Commissioners to deal with, as a question of fact, whether the business of a husband, as the director and secretary of a company, is unconnected with the business of his wife, employed as the bookkeeper of that same company. We imagine that the Commissioners would inquire into the matter from a reasonably common-sense standpoint. If there be really an independent company by which they both happen to be employed, the decision would probably go in their favour, but if the company be a one-man company—which seems *prima facie* to be suggested by the facts stated—then we have no doubt that the Commissioners would not be satisfied that the couple were entitled to separate assessment.

**Forfeited Shares.** The further letter from Mr. A. Warr King, which appeared in our Correspondence column last week, enables us to deal more effectively with the point raised in his previous communication. In Chapter XIV. of his "Company Law" Mr. F. B. Palmer states: "Occasionally the regulations provide that a lien may be enforced by forfeiture, but such a provision is not effective, for the lien

"is an equitable mortgage, and a clause for forfeiture in a mortgage is in equity inoperative. The rule is that once a mortgage, always a mortgage, and any attempt to clog the equity of redemption is futile." The words that we have quoted appear in the paragraph immediately preceding that referred to by our correspondent, and have an undeniable bearing upon the matter. In our issue of the 5th inst. we stated that *prima facie* a power of forfeiture which amounted to more than a lien on the member's shares seemed bad, and we see no reason to modify that view. If the forfeiture clause is to be effective, it seems clear that care must be taken to avoid the creation of a lien in any shape or form whatever. Now that the text of the article referred to has been given, it would appear that this precaution has been taken, and incidentally this shows the importance of the exact text being quoted whenever an opinion is being asked as to the true interpretation of a clause.

**The Mutual Life Assurance Company of New York.** The offer made by the North British and Mercantile Insurance Company to the British policy-holders in the Mutual of New York to take over the existing policies, and issue in place of them similar North British policies, without any medical examination or expense, at the same premiums and for the same sums assured, is, we imagine, likely to be taken very general advantage of by a large number of the British policy-holders in the American company.

**The Association of Municipal Corporations.** At the annual meeting of the Association of Municipal Corporations, which was held on the 17th inst. at the Mansion House, the Lord Mayor attended and opened the proceedings, which were afterwards presided over by Sir James Woodhouse, M.P., who was elected President in the place of Sir Albert K. Rollit, resigned. Mr. J. S. Harmood-Banner, F.C.A., M.P., was at the same time elected Vice-President.

**A Point in Rating Law.** A question which may sometimes prove of interest to some of our readers who have insolvent estates to realise came before the Manchester City Stipendiary last week, in a case brought by the Corporation against a Mr. J. H. Wood to recover £4 17s. 9d. due for the water rate of an

unoccupied house of which he was the owner. The defence was that the house, although kept furnished for the purpose of letting it to tenants, was not occupied, and that there was, therefore, no beneficial occupation rendering the defendant liable for the rate. The magistrate, however, decided otherwise, pointing out that although no case exactly like this appeared to have been decided in the English Courts, that of *Staunton v. Powell*, which was decided in 1867, dealt with facts that were practically undistinguishable from those of the present case. In that case the Court of Exchequer Chamber held the landlord liable for rates in respect of the premises both while the house was let and while it was unlet, and he gave his order accordingly.

**Cumulative or Non-Cumulative Preference Dividends.** In the High Court last week Mr Justice Joyce was occupied for some hours in dealing with a question as to whether the holders of preference shares in M. B. Foster & Sons, Lim., were or were not entitled to cumulative dividends, and he eventually decided that they were. It seems strange that so apparently simple a point as this should call for judicial decision. There ought, of course, to be absolutely no doubt as to what the holders of any class of shares in a public company are entitled to, and if even the prospectus is ambiguous upon such a point, the articles of association, if carefully drawn, ought at least to make it certain.

**Direct and Indirect Taxation.** A number of new taxes have recently been imposed in Germany which it is expected will yield in the aggregate ten million pounds per annum. Many of these—as, for instance, the legacy duty, the tax on railway season tickets, and the taxes on beer and cigarettes—have been levied in this country for a number of years; but, on the other hand, a tax of 8 per cent. on directors' fees would appear to bear unfairly upon a particular class of income, which, in theory at least, deserves better of the State, although probably in Germany, as in this country, directors earn their fees more easily than most other persons. It remains to be seen whether the duty on railway tickets, varying from one penny up to eight shillings, according to the class and distance travelled, will have the effect of restricting business or prove a convenient means of indirect taxation; but, however that may be, in this country the tendency appears to

be in favour of reducing the indirect and increasing the direct taxes. Thus, while two years ago 49.5 per cent. of the aggregate revenue was raised directly, and 50.5 per cent. indirectly, it is calculated that for the year 1906-7 51 per cent. will be raised directly and 49 per cent. indirectly. The precise proportion would be comparatively immaterial but for the fact that the income-tax, which represents the bulk of the direct taxation, is levied from a very small proportion of the population, which proportion has, of course, also to bear its full share of the indirect taxes.

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

#### Income Tax—Married Women.

[REPLY TO "TAX."—I know of no case similar to that put by your correspondent "Tax," but his proper course is to apply, under the Finance Act, 1897, Section 5, to the Commissioners for General Purposes of Income Tax, and I should say he could do so with every chance of success.—OUR LEGAL CONTRIBUTOR.]

#### Income Tax.

*(To the Editor of The Accountant.)*

SIR,—Your leader in to-day's issue respecting the proposed inquiry into the subject of graduated tax is interesting in its conclusions, although your reference to spontaneous income under Schedule A is somewhat too sweeping. A point, I think, generally overlooked is that the tax enters into the prices of commodities in much the same way as other expenditure—*e.g.*, rent, rates, &c. Having in mind the fallacy "to take from the rich benefits the poor," if it would not be better to abolish it altogether on account of its prying nature, irregular levy, and expensive collection, and substitute for it a tax on some import of general utility, inquiry

should again be directed to its greatest defect—*viz.*, that individual trading is taxed with great irregularity and uncertainty, which leads many to be dissatisfied with having to pay what others similarly situated are known to evade.

Yours faithfully,

May 19th 1906.

C. R. TROPMON.

#### Requirements of Auditors.

*(To the Editor of The Accountant.)*

SIR,—The directors of a company registered under the Acts 1862 to 1890, having articles of association which exclude the form of accounts as prescribed in Table A, submit for audit a Balance Sheet which has, included among the sundry debtors, an amount owing by the manager in respect of cash advances which have been authorised by the board. Can I *require* this debt to be stated separately in the Balance Sheet? and should the fact of its being on account of cash be so stated? Does the Companies Act, 1862, refer to the treatment of such debts otherwise than as noted on the Table A Balance Sheet? If such a debt was the result of a deficiency, which was subsequently ordered by the directors to be treated as an asset, could I *require* it to be shown otherwise than as a book debt, in the event of its being of a very doubtful value?

Your advice on the above will be appreciated.

16th May 1906.

JUVENIS.

[Unless the transaction is *ultra vires*, it is a book debt. We do not think that an auditor has any power to "require" one book debt to be stated separately from the rest.—ED. ACCT.]

#### Dividends out of Capital—Auditor's Position.

*(To the Editor of The Accountant.)*

SIR,—A limited company, of which I am auditor, has this past year made a loss on trading of some considerable amount. Notwithstanding this said loss the directors of the company have paid dividends on the preference shares, the whole of which have, therefore, been paid out of capital. I desire to know my position as auditor of the company, and whether I ought to make mention of this in my certificate upon the accounts for the year. If I were to state in the Balance Sheet the debit standing to Profit and Loss Account and show the addition to it of the amount paid as dividends on the preference shares, I think this would clearly indicate the payment of the dividend out of

capital, and that there would be no need to draw the shareholders' attention to the same in my certificate. I shall be glad to have one or two of your readers' views upon the subject, as well as your own opinion.

Yours truly,

22nd May 1906.

PERPLEXED.

[We agree: so long as the facts are clearly shown comment is not required.—*Ed. Acct.*]

#### Registration for Accountants.

(To the Editor of The Accountant.)

SIR,—The remarks by "Scottice," in your issue of 12th May, call attention to the practice prevailing in Scotland of Chartered Accountants taking as many apprentices as they can get. It is a well-known fact that Edinburgh Chartered Accountants practically work their businesses with apprentices, and in many cases the whole office work is done by them.

It does not seem to be in the interest of, nor to add dignity to, the profession that such a state of affairs should continue.

Yours truly,

May 17th 1906.

C.A.

(To the Editor of The Accountant.)

SIR,—I wish to reply to the letter of "Pro Bono Publico" (?), not merely in order to challenge his unmannerly remarks concerning "the juniors who have lately joined," but to deprecate the assumption that he possesses a monopoly of wisdom in this matter.

While reserving the right to request the insertion of a further communication dealing more directly with the very grave questions involved in legislation for the profession, may I point out that there is more than one way of overcoming the difficulty with the letters "C.A.," to which your unknown correspondent so feelingly alludes. It seems to me it would be quite feasible for the Council of our Institute to send out a notice to all the members advising them of the necessity of printing the words "Chartered Accountant" or "Chartered Accountants" in full on their business cards and note-paper, and to follow up this notice by keeping a standing advertisement in the *London Gazette* and a few of the principal newspapers to the effect that persons not actually describing themselves as Chartered Accountants were not necessarily members of a Society of Chartered Accountants, notwithstanding the use by such persons of any initials tending to give colour to the suggestion that they were Chartered Accountants.

By concerted action between the English and Scottish Societies of Chartered Accountants the benefit of this plan might be extended to Scottish Chartered Accountants practising in England.

Yours faithfully,

London, 23rd May 1906.

A. J. WINDUS.

[Our correspondent seems to assume that no unqualified person would describe himself as a "Chartered Accountant." The assumption is, however, not justified by facts.—*Ed. Acct.*]

### Bankers and their Relation to the Money Market.

By STANLEY G. SMITH, A.C.A.

AT a meeting of the London Society, held at the Institute of Chartered Accountants, on Wednesday, the 7th March, the following paper was read by Mr. S. G. SMITH, A.C.A., Mr. E. H. FLETCHER, F.C.A., presiding.

The subject of bankers in general, and their relation to the money market in particular, is one upon which an immense amount of literature has been evolved, and any attempt to compress even its main principles within the limits of a forty minutes' paper is a difficult task; the accountant student, however, requires but a bare outline of its characteristics, he regards the subject only as one chapter in his commercial knowledge, and does not seek for a specialised acquaintance with it. It is upon this basis that the following brief sketch of the rudiments of banking is conceived.

The constitution of the banking world resembles that of the United Kingdom, in that it is divided into three distinct groups or personalities; in the government of the Realm there are the Sovereign and the two Houses of Parliament, and in the banking world there are the Bank of England, the other bankers, and the money dealers. The relation in the money market between these three classes may be described as that of two strong men and a weaker, the money dealers occupying in point of financial strength the dependent position. However, they even are able at times to make their influence felt, and sentiment among all three is distinctly republican. All depend for their existence on a higher influence—that of popular confidence.

The Bank of England occupies a kind of presidential status as the Government banker, the other bankers' banker, the manufacturer of a limited amount of legal tender, and the keeper of the only great cash reserve.

The other bankers appeal to the nation in general, and have extended their influence by a network of branches widespread over the country—they are in some respects the popular house in the constitution.

The group of money dealers comprises a number of different institutions, which carry on their business in the main by means of working capital provided by the other two classes. There are a few great bill brokers and discount houses, and a crowd of lesser lights in the same occupation, together with a following of exchange brokers, and financial speculators of all sorts. All these have one thing in common: they trade by means of capital borrowed on security from the bankers, and this is the source of their weakness and their dependence.

They compete among themselves for the getting or placing of short loans and bills, which are the staple articles in which they deal, and to them as a whole is sometimes applied that vague and inconsequential term "The Money Market."

It has already been said that all of the three classes depend for their existence on popular confidence, and the power which keeps them going is the spare cash of the nation in general, entrusted to their charge on varying conditions. Each class calls for detailed consideration, in the light of its own particular business and its ability to repay its borrowings; and the group which seems to call for

attention before the others is that which deals with the public direct, that which forms the channel through which the public's money flows into the money market—the "Other Bankers."

#### *Other Bankers.*

Under this heading are included the fraternity of joint-stock banking companies, with their innumerable branches, the few surviving private bankers, and the foreign banks in London.

The principle on which they conduct their business is simple. They take immense sums of money from their customers, most of it repayable on demand and the rest at a few days' notice. Of this money they keep in hand so much as is reasonably sufficient to meet all *probable* demands for repayment, and they employ the remainder at interest. It is obvious that a banker cannot keep in hand sufficient to meet all *possible* demands, for the possibility is only limited by the total amount of his liabilities, and could only be met by keeping the whole of his deposits in the shape of idle bullion locked up in his vaults. In order to cover his expenses and create a profit some portion of his deposits must be actively employed, and the law of averages assures him of the extreme improbability of more than a certain percentage of his depositors calling for their money at any given time. This principle will be found carried out in the Balance Sheet subjoined.

#### JOINT STOCK BANK.

Capital Subscribed .. .. .	£8,000,000
Paid up .. .. .	£2,000,000
Reserve .. .. .	1,450,000
Current and Deposit Accounts .. .. .	43,000,000
Liabilities on Acceptances .. .. .	3,000,000
Rebate on Bills not due .. .. .	32,000
Profit and Loss Account .. .. .	270,000

£49,752,000

Cash in hand and with Bank of England ..	£8,000,000
Loans at Call and Notice on Securities ..	3,600,000
	£11,600,000
Investments:—	
Consols at 85 and Government Securities ..	6,000,000
Indian Stocks .. .. .	900,000
Corporation Stocks .. .. .	1,600,000
Other Stocks .. .. .	19,000
	8,519,000
	20,119,000
Bills Discounted .. .. .	7,700,000
Loans and Advances .. .. .	18,000,000
	25,700,000
Acceptances, per contra .. .. .	3,000,000
Premises .. .. .	933,000
	£49,752,000

The liabilities to customers on Current, Deposit, and other Accounts amount to 43 millions, of which the Current Account money is legally repayable on demand, and the deposit money at usually seven days' notice. The total of Deposit Accounts is rarely stated separately, but it probably does not exceed a quarter of the whole. In return for the stipulation of so many days' notice the banker allows interest on this deposit money at (in London)  $1\frac{1}{2}$  per cent. below the Bank of England's discount rate, Bank rate being taken as an impartial standard of the value of money.

The bank's own capital is stated immediately above the deposits. In this case the proprietors' funds, existing and possible, amount to  $9\frac{1}{2}$  millions, made up of two millions of paid-up capital, a further six millions uncalled, and a reserve of a million and a-half. Doubtless some of the uncalled capital is reserved for liquidation purposes.

On the other side of the Balance Sheet the first item is "Cash at the Head Office and Branches and with the Bank of England," eight millions. Of this the greater part is probably with the Bank of England on current account. Banks generally are averse to keeping any quantity of coin



on hand themselves. As a rule, they keep in their own tills little more than enough to meet their own daily requirements, and prefer to throw the responsibility on the shoulders of the Bank of England; just as their customers regard their balances with them as cash, so the banks regard their own balances with the Bank of England.

It is owing to their custom in this respect that the other bankers take such a keen interest in the soundness of the central institution's position. Their united balances are reflected in the published Balance Sheets of the Bank of England, and are said to form more than half its current account liabilities; any rise or fall in the latter can usually be referred to an increase or decrease in the other bankers' cash balances.

For all ordinary purposes money at the Bank of England may be regarded as the equivalent of the cash with which it is grouped, and it is on the sufficiency of the total that the soundness of a bank's position primarily depends. The ratio of cash to liabilities given in the Balance Sheet is eight millions cash to 43 millions liabilities, a percentage of 18.

The next asset is "Loans at call and notice covered by Securities,"  $3\frac{1}{2}$  millions. This is sometimes called *Money* at call and notice, but is a very different thing from coin, or a Bank of England cheque. It represents the margin of uninvested funds which the bank happens to have on hand, which it does not wish to lock up permanently, or yet to leave absolutely idle at the Bank of England, and which accordingly it lends out to the money dealers at short notice. The discount houses, or bill brokers, carry on their business on large sums of money borrowed thus on security, at a low rate of interest and for short periods continuously, and it is in loans of this description that the banker places the money he wishes to regard as ready to hand in case of need. The same applies to fortnightly loans to stockbrokers on security.

From the point of view of realisability, money thus placed out on the money market is not without its disadvantages. The money dealers have been described as "butterflies, living only for a day," and they keep little or no cash reserve. If the bankers should call in some of the money placed with them they are sent a'borrowing from somebody else in order to repay him, for all their money is locked up in securities or bills of exchange, and these do not mature immediately.

The remainder of the bank's assets are of a more permanent nature, and are ranged in order of their realisability. The investments are roughly nine millions, of which six millions are British Government Securities, and the remainder stocks of a very high nature. The Consols are written down to 85, and possibly the other investments are valued in proportion. In the Consols there exists a semi-secret reserve at present quotations of about £300,000,

but the stock is written down to the lower figure, so as to modify any loss on a forced realisation. The security of this asset is, of course, absolute, so far as certainty of income goes, but it is by no means so certain from a realisation point of view in times of stress. In normal times the saying is that Consols can be sold on a Sunday, and there is no stock which is so freely dealt in on the Stock Exchange, but it would not be easy to find a buyer for six millions of stock in panic days. However, it is understood that the Bank of England has always been prepared to lend notes for Consols, even when a state of scare prevailed.

The cash, short money, and gilt-edged investments, together form the more liquid and realisable portion of the bank's assets; bills discounted may be counted as realisable if approaching maturity, but in the Balance Sheet given are rightly classed with the other loans.

The percentages of these "quick" assets, to use an Americanism, to liabilities are important in regard to the bank's soundness. They are here approximately:—

Cash .. .. .	18%
Short Loans .. .. .	9%
British Government Investments .. .. .	13%
Other Investments .. .. .	9%
In all .. .. .	<u>49%</u>

And these are proportions well up to the averages usually shown.

The next group of assets assumes very large proportions. The bills discounted amount to nearly eight millions, and the advances to eighteen, in all almost 26 millions. Among these the better class of bills discounted are probably the most realisable. The bills usually divide themselves into two groups—those bought by the banker from the discount houses, on *his own* initiative and as an investment, and those discounted for customers at *their* request.

The bills bought as an investment will, as a rule, be found to be drawn either on banks or kindred houses of the highest reputation. Bills of this class are favoured among bankers as a temporary investment. They bear the security of two or three unquestioned names and the guarantee or endorsement of the discount broker. They turn themselves into money at maturity without fear of depreciation, and their yield in interest is fixed on purchase. Many of them are *drawn* from abroad on London houses, but none will be *payable* abroad, for London bankers will not as a rule buy bills payable in a foreign country.

The first class of bank bill is not only favoured by London bankers, it is at times the subject of Continental competition. Banks across the Channel are not so rigid in their bill buying as our domestic institutions, and when the purchase of bills in London will yield a favourable rate of

interest they have shown themselves prepared to remit money to their agents here for employment.

The other class of bills held will be composed of those bought by the banker from his customers direct. These will for the most part be trade bills of all sorts and conditions, as regards desirability. At the top of the scale will be a proportion of first class trade bills, closely approaching bank bills in security, and at the other end will be a sprinkling of inferior paper of a rather doubtful quality, perhaps similar to accommodation bills.

The rate of discount charged by a banker to his discounting customer naturally changes according to the chance of the bill being honoured at maturity—it varies in inverse ratio to the character of the parties to it. In some cases what appears as a bill transaction is really a loan on security, the bill being used to fix the legal responsibilities of the parties, but the security being relied on rather than the signatures.

Advances to customers amount to eighteen millions, and this is by far the largest group of assets in the Balance Sheet. It represents money lent on almost all and every class of security, provided it be of a fairly realisable nature. The security will vary with the locality: in towns it may be investments, goods, and staple commodities, from railway debentures down to bales of cotton; in the country it may take the form of landed property under mortgage; and in the suburbs of "eligible villa residences," though it must be said that in advancing on houses and land the banks will usually only do so as a temporary matter. The money sunk in loans and advances cannot be said to be easily realisable as a whole if suddenly needed, and the proportions to which these loans may amount must, from consideration of safety, be restricted, though the rate of interest yielded by these assets is higher and more tempting than that produced by those more liquid.

The premises are stated in the Balance Sheet at about £800,000. They are usually freehold, and, being written down far below their value or their original cost, provide another secret reserve, though it is only the exact amount which is secret, and not the fact of its existence.

Acceptances on behalf of customers appear on both sides of the Balance Sheet. They are, of course, on the face of them, bills payable accepted by the bank, which relies on its own customers to put it in funds at maturity. Some of them will be covered by security of various descriptions, and some of them, drawn by banks abroad for exchange operations, will be covered by no security at all.

Before considering the position of the other great bank, the Bank of England, it will be useful to glance at the position of the money dealers, who are in a way the satellites of the other bankers.

Of these the borrowers on the Stock Exchange form one

great class and the bill dealers another. The Stock Exchange borrowings are to a very great extent the outcome of the contango system. If a speculator has bought stock for the rise without having the money to pay for it, and as settlement day draws near his hopes have not yet been fulfilled, he will usually instruct his broker to "carry the stock over" to the next account. Acting on these instructions the broker will find someone who is prepared to lend money on the stock for the forthcoming account, and in all probability that lender is himself pledging the stock to his banker. Thus the money lent by a banker on Stock Exchange securities from one fortnightly settlement to the next as a rule eventually comes to be lent to the speculator on security he has purchased for the rise. It is consequently not easy to recall suddenly in troubled times.

In order to understand the position of money lent to the bill brokers and discount houses some account of their business is necessary. Their occupation is one which the other bankers could carry on if they had the time and the inclination; it is simply that of the purchase and sale of bills of exchange.

They are open to discount approved acceptances at the finest possible rates, and they do so almost entirely by means of money borrowed from the banks on batches of bills which they have already purchased. The banks themselves discount trade bills for their own customers, but almost all the bank bills, and a large proportion of the trade bills, are sent by merchants to the discount companies, who have an intimate knowledge of the larger firms' financial standing, and quote fine rates.

Having bought the bills the discount houses either re-sell them to the banks, if the latter are buying, and make a slight profit in the rate of discount, or themselves hold the bills until maturity. They conduct their business almost entirely on borrowed capital, as the following Balance Sheet will serve to show:—

## DISCOUNT COMPANY.

	£		£
Capital paid up .. ..	800,000	Cash at Bankers .. ..	170,000
Reserve .. ..	400,000	Investments .. ..	1,800,000
Deposits and Sundry .. ..		Loans .. ..	2,300,000
Balances .. ..	10,100,000	Sundry Balances .. ..	52,000
Bills Re-discounted .. ..	3,000,000	Bills Discounted .. ..	10,000,000
Rebate .. ..	64,000	Premises .. ..	102,000
Profit and Loss .. ..	60,000		
	<u>£14,421,000</u>		<u>£14,424,000</u>

The ten millions of deposits on the liabilities' side represent borrowings from the bankers (and to a small extent from the public), and the corresponding assets are seven millions of bills of exchange and three millions of investments and loans to other people. The cash in hand is £170,000, something less than 2 per cent. of the liabilities, and those liabilities are repayable partly at call and partly at a few days' notice.

It is obvious that this institution is keeping no cash reserve worth mentioning, and the reason is that it cannot afford to do so; it is paying interest on every penny of its liabilities, and almost every penny of its assets must be interest producing. It is out of the difference between the rate at which it borrows and the rate of interest yielded by putting the money into bills that the discount house pays its expenses and secures its profit, and the margin is cut fine by competition.

If some of the banks require repayment of part of their advances the bill broker relies on the maturing of part of his bill portfolio, or on being able to borrow money from the other bankers. If all the bankers are recalling money there is only one institution which will give the broker the assistance he requires—viz., the Bank of England—and he is averse to going to the Bank if he can avoid it, for he will have to pay its rate of interest, which usually spells a loss.

The rate of discount at which bill brokers are prepared to buy bills is, of course, dependent mainly on the rate they pay to the bankers for their working capital; they have little concern with the official discount rate of the Bank of England, except as the rate of a rival institution, and a general standard which they do their best to underbid. In fixing their rates, however, they are forced to consider not only the rates which working capital now cost them, but its probable quotation every day in the future until their projected purchases shall mature.

Nor can they be said to be entirely free agents in the fixing of discount quotations; they are dependent on the banks for the greater part of their working capital, and by raising the rates for its hire the bankers can force them to put up the rates at which they can afford to buy bills from the public.

The official minimum discount rate of the Bank of England is the minimum rate at which it is prepared to buy first-class acceptances; it is not fixed on the same lines as the discount houses fix their rates, and in ordinary times they have little difficulty in underbidding it. Nevertheless, they do not lose sight of the fact that it is the rate they will have to pay if demands for repayment from the other bankers force them to sell some of their bills to the Bank of England.

The Bank of England, too, occasionally objects to the discount houses lowering quotations to a figure far below its own published discount rate. It may be from a personal aversion to being left out in the cold (for the Bank in its discounting capacity is to some extent the rival of the other discount houses), or it may be from reasons of financial policy. In such a case it induces the other bankers, by co-operation or by compulsion, to cut down supplies of working capital to the discount houses, who are then forced to come to it for assistance, and pay the rates it

asks. They are then naturally forced to raise market quotations or trade at a loss.

The remaining figure to be considered is the Bank of England, popularly called *the Bank*.

The exact function it fulfils is the subject of much misapprehension, and it may be worth while to define it.

The Bank is not a Government office, nor is the Government responsible for its obligations. It acts as the Government banker, just as any other banker might, and as registrar of the National Debt, in the same manner as the London and Westminster acts for some of the Australian Colonies. It advances money to the Government pending the inflow of taxation, and is always in close touch with the Exchequer, but it is not a Government department. Besides acting as banker for the State, it fills a similar capacity for many of the large commercial houses, and for the whole of the London clearing bankers; it also enjoys a limited privilege of issuing notes.

In order to understand the constitution of the Bank it is necessary to hark back to conditions prevailing early in the last century, when George IV. was on the Throne. In those days bank-notes formed the popular currency; payment by cheque was a privilege reserved for a wealthy few, as the existing private banks demanded large permanent balances from their customers. Notes were issued by the Bank of England and by country private bankers, but the private banks in London had discontinued the practice owing to the Bank of England's competition. The liabilities of the country bankers were large, and almost entirely consisted of their note issues. When in the fullness of time a crop of failures occurred among them, the loss to the middle and lower classes was serious; that large part of the country's currency which took the shape of notes tended to become discredited, and trade was consequently impeded.

In 1844 the Bank Charter Act was passed, and it was designed to secure the country's currency by gradually extinguishing private note issues, substituting that of the Bank of England and securing its convertibility. It has accomplished these objects almost completely, but another custom has arisen which was not foreseen. Notes as a currency medium have almost disappeared. The cheque has supplanted it as a means of universal payment, and notes are only used to a restricted extent.

Under the Bank Charter Act the Bank of England was split into two distinct halves, to one of which the business of note issue was entrusted, while the general banking business was relegated to the other. This division still subsists, and is reflected in the published Balance Sheet.

The Issue Department carries on its business as an entirely separate undertaking, with separate assets wherewith to meet its liabilities, and a separate portion of the bank building. Its functions are purely automatic. It may

issue notes up to just over eighteen millions against Government securities held, but for every note issued above that figure gold to the full face value must be in its possession. The interest on the securities pays for the printing of the note, the clerical labour involved, and provides a moderate profit for the Bank. Under these circumstances the convertibility of its notes is practically assured, as a glance at the Issue Department's Balance Sheet will show. Notes issued to the public, and to the other half of the Bank of England itself, amount to 49 millions, and the assets to meet these are eighteen millions of securities and thirty-one millions of gold. As long as eighteen millions of notes remain in circulation paper can be exchanged for the metal it represents, and it is in the highest degree unlikely that the circulation will ever fall below that sum. Experience shows that even in the extremity of panic the Bank of England note passes unchallenged; it is legal tender, and can be used for the payment of the nation's debts.

Under the Act of 1844 anyone may take sovereigns to the Bank and demand notes in exchange for them. The notes are, of course, payable to bearer on demand. The function of the Issue Department is thus clearly automatic: if gold comes in, notes are printed and go out; if notes come in for payment, they are cancelled on delivery up of the gold. The note issued thus exercises little influence over the money market in normal times, though, in days of panic, when the public is rushing to cash its cheques into notes or gold, of which there is but a limited supply, the directors and the Government may jointly resolve to break the Act of 1844, and to issue notes against securities over and above the limit of eighteen millions. The excess notes thus issued against securities obviously could not be all of them honoured in gold, but, as has already been said, the public is satisfied when it gets notes and does not wish to present them.

## BANK OF ENGLAND.

## ISSUE DEPARTMENT.

Notes Issued .. ..	£ 49,368,535	Government Debt. ..	£ 11,015,110
		Other Securities .. ..	7,434,902
		Gold Coin and Bullion..	30,918,535
	<u>£49,368,535</u>		<u>£49,368,535</u>

## BANKING DEPARTMENT.

Capital .. ..	£ 14,553,000	Government Securities	£ 13,439,473
Reserve .. ..	3,533,350	Other Securities .. ..	37,224,692
Public Deposits ..	7,810,844	Notes .. ..	21,091,090
Other Deposits ..	47,286,992	Gold and Silver Coin..	1,522,615
Seven Day and other Bills .. ..	93,684		
	<u>£73,277,870</u>		<u>£73,277,870</u>

The other department of the Bank is its "Banking

Department," whose Balance Sheet forms the second half of the composite statement given above.

This department is a bank in the ordinary sense of the word, but exceeds most banks in the nature and size of its operations.

Its chief customers are the other bankers themselves and the Government, and owing perhaps to the fact that they are of such standing the Bank keeps in hand a far greater proportion of its deposits in notes and coin than do the other bankers. Its cash balance is usually about 45 per cent. of its liabilities, as compared with the other bankers' 15 or 20. This great accumulation of idle money is its most striking feature.

It will be useful to glance at the items in the Balance Sheet in detail.

The Proprietors' Capital amounts to 14½ millions, and the striking point about this figure is its magnitude; it is as large as the united capital of the State Banks of France and Germany, and the paid-up capital of other domestic banks looks insignificant in comparison. For instance, the three millions of the London and Westminster. Its size, of course, gives the Bank a great amount of power, quite irrespective of its customers' balances.

The Rest, three-and-a-half millions, is the undivided balance of Profit and Loss Account. It is not permitted to fall below three millions, and to that extent may be regarded as a reserve, and as an addition to the working capital.

The third and fourth items, the "Government" and the "Other" deposits form the Banking Department's liabilities, 50 millions in all. There is a slight difference between the two classes, inasmuch as the "other" deposits are subject to withdrawal in times of emergency by the bankers and traders to whom they are due, but the same possibility hardly attaches to the Government balance.

The weekly variations in these figures indicate roughly the state of the supply of loanable capital. The "other deposits" are composed of amounts owing to the public in general and to the other bankers in particular. The portion due to the public (excluding bankers) may be taken to be fairly constant, and it follows that any variation in the total is probably due to fluctuations in the other portion—the bankers' balances—and according as it rises or falls, so the inference may be drawn that they have money in abundance or the reverse.

As a rule, during the first quarter of the year the Government deposits show a tendency to grow, while the other deposits are steadily declining. This phenomenon is due to the fact that the Government is busily engaged in the collection of the income-tax and other duties, which are paid to them in the shape of cheques on the other bankers, causing the latter to decrease their balances. In addition to drawing on their money at the Bank, the other bankers

are forced to call in money from the bill brokers, who are forced sometimes to go to the Bank of England for the necessary accommodation. It consequently follows that in such a time money is likely to be dear, and the Bank of England's influence over ruling rates of discount tends to be strong. When, about the 5th April, the money collected is used by the Government to pay its liabilities conditions are reversed; the other deposits increase, while the public deposits fall, the brokers repay the money they have borrowed from the Bank of England, and its influence on their quotations wanes—money becomes cheaper.

If in times of alarm the other deposits increase (as they usually do) the inference is that the other bankers are strengthening their cash balance with the Bank of England.

Government securities appear on the assets' side at about twelve millions, a figure which is again remarkable for its magnitude.

The "Other" securities are not necessarily of a lower standard than the "Government" item, but are of a much more varied character. Included in this figure are the Bank's holding of corporation and debenture stocks, which are doubtless fairly stationary, and the more active items of bills discounted and loans on security. These latter usually fluctuate according to the extent to which the bill brokers and money dealers are forced to have recourse to the Bank in order to pay their other creditors—*i.e.*, the other bankers—and vary to some extent in sympathy with the other bankers' balances with the Bank of England—*i.e.*, the "other deposits."

The remaining figures on the assets' side are notes and coin to the extent of over 22 millions, the notes being the equivalent of actual gold held in the Issue Department. This cash reserve amounts to a far greater proportion of the Bank's liabilities than would be the case if the Bank of England carried on an ordinary banking business and nothing more; it works out at 41 per cent. of the Bank's current and deposit liabilities, as compared with the other bankers' 18 or 20, and is wholly in the shape of legal tender, while a great part of theirs is merely a current account balance with the Bank of England itself. It is because the Bank is the Government depository as well as that of the other bankers that this high percentage is maintained, and it is on the maintenance of a sufficiently high ratio by the Bank of England that the whole fabric of English banking credit may be said primarily to depend. In days when a banking panic appears on the horizon the Bank of England's cash reserve plays the most important part. At such times two courses are open to the Bank. One is to try and convert its assets into money, to call in its loans, to refuse to advance anything more to anybody, to rely on its reserve of cash and prepare for the worst. Such a course has been tried in the past, and nearly wrecked the

country's commerce, and for these reasons: the course here suggested for the Bank, that of retrenchment, is just the policy on which all the other banks are working, each anxious for its own safety, each calling in money and refusing to lend. At the same time, merchants with acceptances to meet, bill brokers whose working capital has been recalled, are running round the City with absolutely indisputable security, each feverishly anxious to borrow in order to strengthen his position, or to honour his obligations. Unless in these circumstances the Bank of England will adopt the bolder policy of making loans these would-be borrowers will have to face the storm in all their unpreparedness, and the fever of anticipation will become intense.

The Bank has in the past realised that its only hope of stifling the panic lies in the direction of lending freely on any security which is good in ordinary times, and the loans are all made out of its cash reserve. Hence the great importance of its sufficiency.

There are, however, in ordinary times many demands on the Bank's cash balance, and occasionally energetic measures are needful in order to prevent it ebbing away.

In the first place, the fact that the other bankers keep but little cash in their tills, and large balances at the Bank of England, causes any extra demand for currency to fall on the Bank's cash reserve; if the public cashes its cheques into notes and coin the other banks draw currency from the central institution to replenish their tills. In the next place, there are times when foreign banks in London and exchange dealers decide to ship gold abroad to their foreign houses, either to secure the small profit sometimes obtainable, or as a means of remittance when bills payable abroad are scarce. In all these cases, be the demand for money to pay agricultural wages or to ship abroad, the gold comes out of the cash balance of the Bank of England, and for the time being weakens its position. In the case of money sent down into the provinces to pay wages, its return in a few weeks can be usually counted on. It trickles back through the hands of the local shopkeepers, their local banks, thence to the banks' head offices, and so to the Bank of England.

On the other hand, if gold is taken for abroad, it is gone for good, and if the bank desires to keep its reserve at the original level it must attract fresh gold from abroad.

It provides this attractive force by raising the rate of interest generally ruling in this country. The enhanced return then obtainable here induces foreign banks to send money to London for employment, and some of it usually comes in gold. This well-known custom on the part of the Bank of England explains the keen interest which the money market takes in its published bullion returns; heavy withdrawals of gold usually foreshadow a rise in the Bank rate for loans and discounts, accompanied by a

general tightening up of money rates all round, and these are matters of vital import to those who trade on borrowed capital. A few exports alone are sufficient to cause the other bankers and the money market to raise their rates, even though the Bank of England has not actually yet raised its own.

If the Bank desires to see the ruling rate of interest at a higher level it is not sufficient, of course, that it shall raise its own rate of discount and interest, and rest with doing that. It has already been mentioned that the bill brokers and money dealers do not base their own quotations on the Bank of England's rates; they endeavour to underbid them. It consequently sometimes becomes incumbent on the Bank to force the money market to raise its quotations.

The mere raising of the Bank rate affects the other bankers to some extent, for since the interest on their customers' deposits is calculated at "1½ per cent. below Bank," a rise in the latter means that they will have to pay more for a portion of their money. This in its turn inclines them to charging the bill broker a higher price for his borrowed capital, and that compels him to increase the rate of discount charged to the public.

At times, however, so great is the supply of idle money in the other bankers' hands, that they are bound either to keep it idle or let the bill brokers have it at a cheap rate, notwithstanding the position of the Bank of England's official minimum. The Bank of England in such a case finds that the market does not follow the rise in its own quotations, and goes to the root of the matter by itself borrowing the excess of idle money which stands in its way. Its aim is to induce the other bankers to recall some of their loans to the market, thus creating an artificial scarcity, in which the discount houses will be compelled to come to it for advances, and pay the higher rates it is endeavouring to bring about.

The way in which, during the last two months of 1905, the Bank attained its object was by approaching some of the largest joint-stock banks with the request that they would recall some of their loans to the bill brokers, and place the money on deposit with the Bank of England itself. The other bankers' acquiescence created a sudden artificial scarcity, and bill brokers were forced to apply to the Bank for advances and discounts, pay the rates it demanded, and raise their quotations generally. The Bank had made its rate "effective," and the threatened drain of money to the Continent disappeared from sight.

Prior to this winter (1905-6) the Bank had been accustomed to make its rate effective by a more roundabout process. It would sell large blocks of Consols on the Stock Exchange for cash, and for this stock the jobbers had to pay. Their cheques on their own bankers diminished these bankers' cash balances, and in order to replenish them money had to be recalled from the bill

brokers, who in their turn had to apply to the Bank of England in the usual manner. The same result is here achieved, but the process is one of compulsion on the Bank's part, as opposed to co-operation with the joint-stock banks in the later precedent.

The amount of money which the Bank is required to absorb from the money market in order to stiffen rates is comparatively small, when the total deposits of the joint-stock banks are considered. The borrowing of about five millions of floating money during one week early in last December sufficed to raise discount quotations from 3½ (which was ½ per cent. below Bank rate) up to the Bank's official minimum of 4 per cent. This was on the occasion when the Bank had borrowed that sum from the other bankers, who were compelling the bill brokers to apply to the Bank for assistance at its official rates of 5 per cent. for loans and 4 per cent. for discounts. The total deposits of the joint-stock banks are somewhere in the neighbourhood of six hundred millions, and that a demand for less than a hundredth part of this sum should cause an appreciable disturbance in rates shows how delicate is the equipoise of our money market.

The policy of the Bank of England in times of threatened crisis has already been indicated. It is that of lending freely out of the cash reserve to all and sundry, provided they present security which in ordinary times is accepted; for instance, Consols and first-class acceptances. It is obvious that if this process be persisted in the reserve will soon be down to vanishing point, attacked as it is by a simultaneous demand for repayment of old liabilities and for fresh advances, and the question arises as to how any fresh requests for accommodation are to be met when it is gone. The position is that the Bank Charter Act forbids the issue of notes over eighteen millions, unless gold be held for them, and the would-be borrowers have only first-class security to offer. If they could have loans they would not object to taking them in notes, which are legal tender, and there is little fear of any excess issues of notes ever being presented. Under these circumstances the Bank obtains an indemnity from the Government, breaks the law, takes their security, and lends them notes—notes issued by the Issue Department against security over and above the legal limit. These extra issues, of course, weaken the position of the Issue Department in case of a run on it, but past experience goes to show that even when affairs are at their worst the public does not question the Bank of England note. The mere knowledge that notes can be obtained in exchange for reasonable security is in itself almost enough to arrest a panic. It is the fear that there will not be a large enough supply of legal tender to "go round" which is one of its fostering causes.

It is now possible to analyse a money market price list, such as is appended:—

- (1) Bank Rate, 3 per cent.
- (2) Deposits,  $1\frac{1}{2}$  per cent.
- (3) Short Loans,  $2-2\frac{1}{4}$  per cent.
- (4) Discount (three months bank bills),  $2\frac{3}{8}$  per cent.
- (5) Fortnightly Loans, 3 per cent.

The Bank of England's official minimum rate of discount is given as 3 per cent. Its rate for loans covered by security is  $\frac{1}{2}$  per cent., or 1 per cent. above this figure as a rule. These rates are fixed in ordinary times at the Bank directors' weekly meetings on Thursdays. The Bank of England does not make a practice of allowing interest on money deposited with it, and in this its custom differs from that of the other banks, which are usually prepared to accept money on deposit from the public at (in London)  $1\frac{1}{2}$  per cent. below Bank rate, and in the country at rates which are sometimes a little higher.

The rates charged by the other banks to the discount houses for their "short borrowings" are given at 2 to  $2\frac{1}{4}$  per cent. These rates vary from day to day, and perhaps several times in the course of a day, according to the number of brokers who come to borrow, and the available supply of money under the Bank's control.

The rate at which the discount houses were themselves prepared to deal in bills is given at  $2\frac{3}{8}$  per cent. This rate was, at the date taken,  $\frac{5}{8}$  per cent. below the Bank of England's published official minimum, and this is the extent to which the discount brokers had succeeded in underbidding the Bank. This "market" rate is obviously always dependent upon the rate at which the other bankers are prepared to find working capital for the bill brokers to employ.

The last rate given is that which operators on the Stock Exchange were being compelled to pay for loans on securities they had purchased for which they had not the ready money to pay. It is through the medium of this rate that the state of the money market makes itself felt in the speculative departments of the Stock Exchange. When money is dear loans on speculative securities will not be easy to obtain, or cheap in their price—the increased interest charge will lessen or may extinguish any reasonable chance of a profit. Again, when money is cheap it sometimes occurs that securities yielding perhaps 5 per cent. are purchased entirely with money borrowed at possibly 3, simply in order to obtain the margin of interest between the rates paid and received. It is obvious in this case that any "difference" thus secured is entirely profit, as the operator invests none of his own capital in his speculation. Immediately the charge for money rises, however, the profit disappears; the stock must be sold to repay the loan; and if in the meantime the market quotation of that particular security has fallen, the loss of capital will lessen or extinguish the interest profit, or possibly place the balance on the wrong side.

In all their movements the five rates of interest may be roughly said to act in harmony, and to centre round the

Bank of England's official rate. The other bankers' deposit rate follows the Bank rate automatically. The market, discount, and other rates may at times follow their own courses without reference to it, but this divergence is usually only for a short period, the result perhaps of some temporary abundance or occasional scarcity.

The primary cause which regulates the Bank rate has already been said to be the cash reserve of the Banking Department at the Bank of England—in other words, the position of that department with regard to stability; but the causes which make for a rise or fall in the degree of stability at any time are many and various.

One matter is the political situation. When clouds appear to threaten international harmony the bankers of all nations try to restrict their operations, and in the process of doing so withdraw any money they may have in excess in foreign capitals.

Another matter is the state of the country's trade, both foreign and domestic. The banks are all of them intimately interested in the operations of producers and distributors throughout the Kingdom. The bills which they hold represent for the most part payment for commercial transactions, and to the success of those transactions they look for payment. Their loans are to a very great extent to the trading community. Any expansion in trade involves an increased demand for ready money, both in the shape of currency to pay wages and cheques to purchase materials. The demand for legal tender tells on the Bank's cash reserves, and a demand for additional loans and discounts is felt by all banks, including the central institution. The result is that money becomes dear, that the Bank rate attains a high level, and the ultimate cash reserve constantly tends towards diminution. In course of time the briskness of trade evaporates and a period of stagnation ensues; currency tends to return to the Bank of England in a steady stream, and the banks in general have on their hands more money than they can profitably employ, for the supply of trading borrowers has fallen off; the Bank rate falls, and those who have money on deposit at other institutions withdraw it for investment on the Stock Exchange, where higher rates of interest are obtainable. The steady flow of capital into the investment markets has the effect of raising the price of securities in general, and this result, coming as it does into an institution where there are many eager to be wealthy as quickly as possible, may induce a great amount of speculative buying of stocks and shares, culminating in that period of inflation popularly known as a Stock Exchange "boom."

At the conclusion of the lecture a discussion took place, in which the Chairman, Mr. F. G. Brewster, and others took part, and to which Mr. Smith replied, and the meeting closed with hearty votes of thanks to Mr. Fletcher for presiding, and to Mr. Smith for reading his paper.

## Manchester Chartered Accountants Students' Society.

The twenty-third annual general meeting was held on May 14th, at the Library, 60 Spring Gardens, Manchester. The following are the

### Report and Accounts.

Your Committee have pleasure in submitting their Report for the twenty-third year of the Society's existence, ended 31st March 1906.

The aggregate membership is now 351—viz., 28 honorary and 323 ordinary members—as against 356 at the date of the last annual report, showing a decrease of five. The variation is shown as follows:—

		Hon.	Ordinary
Membership at 31st March 1905 ..	..	28	328
Admissions during the year ..	..	1	34
		29	362

Less:

		Hon.	Ordinary
Resignations .. ..	..	1	26
Deaths .. ..	..	0	1
Members struck off in accordance with Rule 8 ..	..	0	12
		—	—

		1	39
Membership at 31st March 1906..	..	28	323

During the year there have been held six ordinary meetings, viz.:—

1905.

Oct. 2.—President's Address and Social Evening.

Nov. 6.—Informal Discussion: "The June Examination Questions." Messrs. F. Dowler, A. R. Webb, and E. Turner.

Dec. 11.—Mock Shareholders' Meeting. Joint debate with Newcastle Students' Society (promoted by the Union of Chartered Accountant Student Societies).

1906.

Feb. 5.—Joint Meeting with the Senior Society.  
Lecture: "The Faculty of Commerce: Its Interest to Accountants." Professor S. J. Chapman, M.A., Dean of the Faculty of Commerce in the Victoria University of Manchester.

Mar. 5.—Lecture: "Leaseholds." Mr. A. R. Moon, LL.B., Solicitor.

„ 26.—Short Papers: "Points in Company Practice." Mr. W. O. Buxton and Mr. A. F. Rountree.

Your Committee take this opportunity of placing on record the obligation which they are under to those gentlemen who have read papers or opened discussions during the year, as also to those who have presented books and pamphlets to the Library.

The following are the details of the attendances, &c., at the various classes:—

*Partnership and Executship Class.*—Lecturer: Mr. W. B. Phillips, A.C.A. Spring, 1905: Number of members, 34; average attendance, 20; number of meetings held, 6.

Result of Examination:—

<i>First Prize.</i>	<i>Second Prize.</i>
D. D. Macnaught.	W. S. Berry.

(Prizes given by the President.)

*Special Prize for working a set of Executship Accounts:—*

B. Cossart	} divided
A. E. Cave	

(Prize given by the Lecturer.)

*Bookkeeping Class.*—Lecturer: Mr. J. H. Stagg, A.C.A. Autumn, 1905: Number of members, 47; average attendance, 28; number of meetings held, 6.

Result of Examination:—

<i>First Prize.</i>	<i>Second Prize.</i>
W. S. Berry.	A. W. Baron.

(Prizes given by the President.)

*Examination Preparation Class.*—Lecturers: Mr. R. N. Carter, F.C.A., and Mr. H. S. Ferguson, A.C.A. Spring, 1905: Number of members, 17; average attendance, 12; number of meetings held, 12. Autumn, 1905: Number of members, 33; average attendance, 20; number of meetings held, 4.

Your Committee regret to observe that at the examinations held in connection with the evening classes at the University no member of the Society was placed in the first class.

The following members were successful at the Institute Examinations:—

### INTERMEDIATE.

<i>May 1905.</i>	<i>November 1905.</i>
†Webb, A. R., 1st (Prize).	†Peake, H. O., 1st (Prize)
†Turner, E., 2nd (bracketed)	Berry, W. S., 9th (bracketed)
Walton, H. B., 12th	
Bennett, D.	Ashworth, C. G.
Blayney, J. H.	Barnaby, E. W.
Cave, A. E.	Bottomley, R.
Jack, E.	Grundy, E.
Jones, E. D.	Jones, H. S.
Knowles, E. M.	Sinclair, J. R.
Leake, G. L.	Smith, F. E.
Miller, R.	Womersley, C. F.
Pilling, T.	
Stott, H.	
Sykes, C. H.	



## FINAL.

May 1905.  
†Dowler, F., 6th.

Barber, R. N.  
Barnes, J. R.  
George, G. B.  
Greenhalgh, A.  
Longrigg, H.  
Platt, T. A.  
Thomson, N.  
Walker, E. H.

November 1905.  
†Ashworth, H., 4th.  
†Lunt, H. J., 5th  
†Murgatroyd, G. B., 7th.

Beswick, J. F.  
Boardman, H.  
Cossart, B.  
Craven, E.  
Goodwin, G. H.  
Macnaught, D. D.  
Terras, H.  
Williams, S.  
Womersley, J. W.  
Worthington, J. H.

†Awarded Prizes according to the Prize Fund regulations.

Your Committee note with extreme pleasure the honours gained by members of this Society in obtaining the first and second places at the Intermediate Examination held in May, and the first place at that in November.

*The Accountants' Journal* continues to be used to record the transactions of the Society.

During the year joint debates have been held under the auspices of the Union of Chartered Accountant Student Societies, taking the form of mock shareholders' meetings of "The Empire Sugar Estates (1900), Limited." As will be seen from the *résumé* of the syllabus in paragraph 3 of this report, this subject was discussed at a meeting held in Manchester on the 11th December 1905, in which three representatives from the Newcastle Students' Society took part. A meeting on similar lines was held in Liverpool on the 14th December 1905, and was attended by Messrs. Dowler, Dryden, and Rountree as representing this Society.

Members of the Society are again reminded that under the rules of the Union facilities are offered for interchange of membership among the Societies composing it.

The result of the Prize Essay Competition promoted by the Union is not yet announced.

In connection with the offer of the Institute of Chartered Accountants to grant financial aid to Chartered Accountant Students' Societies for the purpose of classes preparatory for the Institute Examinations, your Committee have, as foreshadowed in their last annual report, re-arranged the scheme of classes during the year. The

re-arranged scheme has been approved by the senior Society in accordance with the requirements of the Institute in this respect. Full particulars of the new scheme were announced in September last, the main points of alteration being that the Examination Preparation Class is now free to members of the Society, and over-lapping with the Law classes at the University has been avoided.

Your Committee have held five meetings during the year, at which there has been an average attendance of nine members, viz. :—

Mr. H. S. Ferguson, A.C.A. (Chairman), 2.

Mr. H. Ashworth, A.C.A. . . . .	1	Mr. H. S. Lyons, A.C.A. . . . .	2
G. E. Baskerville, A.C.A. . . . .	1	W. B. Phillips, A.C.A. . . . .	3
J. Bell, A.C.A. . . . .	4	J. A. Porter . . . . .	3
A. S. Brewis, F.C.A. . . . .	2	A. F. Rountree, A.C.A. . . . .	4
J. H. Brown, A.C.A. . . . .	4	J. H. Stagg, A.C.A. . . . .	2
R. N. Carter, F.C.A. . . . .	3	*N. Thomson, A.C.A. . . . .	0
A. Charlesworth, F.C.A. . . . .	1	A. R. Webb . . . . .	2
*R. Dryden . . . . .	1	J. W. Womersley, A.C.A. . . . .	2
John Hamer, A.C.A. . . . .	3	A. Wood, A.C.A. . . . .	5

\* Resigned 14th November 1905.

†Elected 14th November 1905.

It is with regret that your Committee have to announce the resignation from office of Mr. Alfred Wood, A.C.A., who has occupied the position of Hon. Secretary during the past two years. Mr. J. W. Womersley, A.C.A., has been appointed in his place.

Your Committee also announce with regret that Mr. A. Charlesworth, F.C.A., who was connected with the Society in its early days, and who has served on the Committee for many years, has found it necessary to resign his seat on the Committee in consequence of increasing engagements.

From the Revenue Account herewith, duly audited, it will be seen that there is an excess of income over expenditure for the year ended 31st March 1906 of £2 2s. 6d.

The Report of the Librarian is appended.

The members of the Committee who retire by rotation are Messrs. Ashworth, Baskerville, Ferguson, Womersley, and Wood (all of whom are eligible for re-election), while Mr. Charlesworth's resignation creates another vacancy.

On behalf of the Committee,

H. S. FERGUSON, A.C.A.,

25th April 1906.

Chairman.

Dr.

REVENUE ACCOUNT, Year ended 31st March 1906.

Cr.

Expenditure.		£	s	d
To Rent of Room . . . . .		30	0	0
Printing and Stationery . . . . .		19	13	3
Grant to Registrar of Library . . . . .		10	10	0
Miscellaneous Expenses . . . . .		19	6	4
Lecturers' Fees and Expenses of Classes under New Scheme . . . . .		49	9	2
Prize Fund . . . . .		11	11	0
Expenses of Meetings :—				
Annual Meeting . . . . .		1	10	0
Social Evening . . . . .		14	11	0
Expenses re Joint Debates . . . . .		3	4	0
Subscriptions to "Accountants' Journal" . . . . .		61	13	9
Subscription to "Union of Students' Societies" . . . . .		8	18	0
Depreciation on Library Books . . . . .		22	0	4
Insurance on Library Books . . . . .		0	7	6
Excess of Income over Expenditure . . . . .		2	2	6

£254 16 10

Income.		£	s	d
By Subscriptions :—				
Honorary Members . . . . .		27	6	0
Ordinary . . . . .		166	8	6
Entrance Fees . . . . .		4	15	0
Estimated proportion of Foundation Grant earned from Institute . . . . .		55	0	0
Bank Interest (less Commission) . . . . .		0	17	5
Fines . . . . .		0	9	11

£254 16 10

Dr.	PRIZE FUND ACCOUNT, year ended 31st March 1906.		Cr.	
	Expenditure.	£ s d	Income.	£ s d
To Amounts granted by the Committee to March 31st 1905 ..	257 14 6		By Donations received to 31st March 1905 .. .. .	202 1 6
" President's Prizes, 1904-5, awarded since last Report, viz.:			" Amounts transferred from Revenue Account to March 31st 1905 .. .. .	57 4 6
D. D. Macnaught .. .. .	£1 1 0			
W. S. Berry .. .. .	0 10 6	I II 6	" Donations received this year:—	
" Amounts granted this year, viz.:—			A. G. Wilde, A.C.A. .. .. .	£3 3 0
Institute Examinations—			W. B. Phillips, A.C.A. .. .. .	0 10 6
A. R. Webb .. .. .	3 3 0			3 13 6
H. O. Peake .. .. .	3 3 0		" Amount transferred from Revenue Account .. .. .	II II 0
F. Dowler .. .. .	1 1 0			
H. Ashworth .. .. .	1 1 0			
H. J. Lunt .. .. .	1 1 0			
G. B. Murgatroyd .. .. .	1 1 0			
E. Turner .. .. .	1 1 0	II II 0		
Students' Society Classes:—				
A. E. Cave .. .. .	0 5 3			
B. Cossart .. .. .	0 5 3			
W. S. Berry .. .. .	1 1 0			
A. W. Baron .. .. .	0 10 6	2 2 0		
" Balance, being President's Prizes (part unawarded pending the result of the Partnership and Executorship Class Examination shortly to be held) .. .. .		I II 6		
	£274 10 6			£274 10 6

**BALANCE SHEET** at 31st March 1906.

[illegible]

**H. S. LYSONS, A.C.A., *Hon. Treasurer.***

**Audited and found correct.**

R. BROWN, A.C.A. } *Hon. Auditors.*  
H. LONGRIGG, A.C.A. }

**Manchester, 5th May 1906.**

**Librarian's Report.**

*To the Committee of the Manchester Chartered Accountants  
Students' Society.*

There have been 3,477 volumes issued from the Library during the year ending March 31 1906, as against 4,582 for the preceding twelve months.

It is particularly desired to call the attention of all our members to the new rule under which they are entitled, subject to the permission of your Hon. Librarian, to obtain books for six months, provided they deposit two-thirds of the cost of the same, one-half of such deposit being repaid them upon the return of the book in good condition.

Possibly owing to its being insufficiently known very little advantage has been taken of this rule.

The amount spent on the Library during the year is £10 13s. 2d., and, whilst hoping that the members find the Library in a satisfactory condition, great assistance is given to the Librarian by a use of the Suggestion Book, which has now been kept at the Library for some years.

Your Hon. Librarian again desires to place on record his indebtedness to Mr. Beckett for his services during the year.

**J. H. STAGG, A.C.A.,**

*Hon. Librarian.*

25th April 1906.

Mr. F. Halsall was elected President, and Mr. F. S. Abbott Vice-President for the ensuing year.

The retiring members of the Committee were re-elected, and Mr. H. J. Lunt was elected in the place of Mr. Charlesworth, retired.

Messrs. H. Longrigg and J. M. Lees were elected Auditors for the ensuing year.

## **The Chartered Accountant Students Society of London.**

### **Junior Essay Competition.**

THE prizes in the Junior Essay Competition on "The Duty and Responsibility of Auditors with regard to the 'Item 'Stock-in-Trade' on a Balance Sheet'" have been awarded as follows :—

1st Prize—C. F. Bird.

2nd Prize—G. H. Bullimore.

## **Chartered Accountants' Dining Club.**

THE popularity of this Club has so much increased since the dinners have been held at the Savoy Hotel, that the Committee have lately decided to alter the rules and increase the number of members to 150, exclusive of the members of the Council.

The annual subscription is only 10/-, and members are entitled to bring one or more guests to each dinner; while the charge for the dinner, inclusive of wines, cigars, &c., is now fixed at 15/- (which is far below the actual cost of the dinner), and £1 for guests. An entertainment is always provided after the dinner.

Any practising members of the profession who may wish to join are requested to communicate with Mr. Montague Pawson, the Hon. Secretary, at 58 Coleman Street, London, E.C.

## **Incorporated Public Accountants of Massachusetts.**

THE annual meeting of the Incorporated Public Accountants of Massachusetts was held at Boston, May 10th 1906. The officers for the ensuing year were elected as follows :—

President, Harvey S. Chase; Vice-President, Thomas S. Spurr; Secretary, William Dillon; Treasurer, Wm. C. Newell; Auditor, Joseph S. Parsons.

Members-at-large of Executive Committee, Wm. Franklin Hall, Herbert F. French, Frederick C. Tufts.

## **Reviews.**

### **Brewers' and Bottlers' Accounts.**

By HERBERT LANHAM, A.C.A.

(THE "ACCOUNTANTS' LIBRARY," Vol. XLIV.)

London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 10s. 6d.

The latest contribution to this useful series is a triple volume on the Accounts of Brewers and Bottlers, from the pen of Mr. Herbert Lanham, A.C.A., whose name will be well known to our readers in connection with the inauguration of the Union of Chartered Accountant Student Societies throughout the country. The intrinsic importance of the subject has rendered the extensive treatment which is only possible in a triple volume not merely desirable, but imperatively necessary, for, as those who peruse the work now before us will readily perceive, no space has been wasted, and yet there is nothing superfluous. The treatment throughout is systematic and concise, but at the same time entirely adequate. Amongst other matters, we note that the important subjects of Cost Accounts, Empties, and Stock Books are adequately dealt with, and, indeed, the whole work is singularly complete. The treatment of Bottling, and the effective steps taken to institute a useful system of check against waste and loss is also most interesting. A useful chapter on the Licensing Act, 1904, is appended by Mr. W. C. Northcott, which deals with the various problems arising in accounts in connection with contributions to and payments from the Compensation Fund. The full text of this important measure is also given in the form of an appendix. Altogether, the volume now before us is quite one of the most interesting and useful of this excellent series.

### **Compound Division Ready Reckoner.**

By W. P. WETHERED.

Frome, 1906: Butler & Tanner. Third Edition.

This handbook comprises upwards of three hundred and fifty pages of tables which can hardly fail to prove of use to those who from time to time have occasion to make numerous calculations in division. In the practice of the ordinary professional accountant such occasions are not likely to be frequent, but in connection, for instance, with multiple costs, the necessity will arise, and also when making such calculations as may involve the use of compound interest tables. The work is clearly printed and arranged, and is as compact as is reasonably consistent with completeness.

## French Abbreviations—Commercial, Financial, and General.

By EDWARD LATHAM.

London, 1906: Effingham Wilson, 54 Threadneedle Street, E.C. Price 2s. 6d. net.

This little handbook will be found of considerable value to many, in that it not merely gives the English equivalents for a large number of French technical terms, but also deals with the abbreviations commonly in use and their corresponding equivalents in English. To those who have occasion to conduct a correspondence in French, and are not entirely familiar with its commercial and financial terms, this handbook may be confidently recommended.

## East Ham and the L.G.B. Auditor.

### Secret Trust Fund.

(From *The Municipal Journal*.)

At a meeting of the East Ham Corporation on the 8th inst. the Council in Committee presented a report dealing with the Local Government Board auditor's criticisms on the district's finances generally, and on what he had described as a "secret trust fund." The most interesting point of the document is that concerning the "Secret Trust Fund," and we reprint it in full:—

All the transactions connected with this fund were fully known by the District Council (as a body) from the beginning, but as individual members composing the Council vary from year to year it follows that all the facts might possibly not be known by all the members.

Nothing whatever was done with regard to the original fund or its subsequent user except by order of the Council. It is true that nothing appears upon the ordinary minutes with respect to it, as if it had done the auditor would, of course, have included it in the Council's funds, thus depriving the Council of the power to carry out special useful improvements which they would have been unable to do except at a very large cost to the ratepayers. Therefore, by the creation of this fund a profit of £2,207 2s. 9d. was made for the ratepayers on the first transaction, in addition to the site of the Manor Park Library, which may, at a reasonable computation, be reckoned at the value of £750, and a strip of land in front of St. Michael's Church, which has since been exchanged with the trustees of the church for land for widening Church Road.

By virtue of the East Ham Improvement Act, 1898, the public rights over the Roadside Waste, adjoining Romford Road, were vested in the Council (but no land, as stated

by the auditor), and the Council had power to sell all, or any, of such rights.

In July 1898 they conveyed portions of such rights to one Charles Henry Mills, as their nominee, upon an assessed value by the Council of £510. This amount was not paid over to the Treasurer of the District Council at the time of completion of purchase, but formed part of the fund now described as the "Secret Trust Fund."

The said C. H. Mills was by deed appointed nominee under the seal of the Council, and such appointment was made with the full concurrence of the members of the Council in Committee, but no record of the sealing was inserted in the ordinary minutes of the Council.

### *The Position of the Officers.*

An agreement was afterwards entered into by the said nominee for the purchase of freehold land in the rear of the waste land, and the vendor's rights in the waste land in question, the purchase being completed on the 27th day of July 1898 for the sum of £2,700. The sum of £3,000 was advanced by the bankers at the request and on the security of the signatures of three nominees, viz.:—Messrs. C. E. Wilson (the Clerk to the Council), A. Plant (the Treasurer), and W. H. Savage (the Surveyor). These three gentlemen, it may be stated, were by deed indemnified by the Council against liability in connection with the said advance and interest, &c.

The whole of the land comprising the front and rear portions (minus the site reserved for a library and the strip in front of the church) was valued, and a reserve price of £13 per foot frontage was fixed by the Council.

By order of the Council made in September 1898 a notice board with plan thereon was fixed on the land stating that it was for sale. Numerous offers were received, and the land was eventually sold at the reserve price in June and July 1899.

In addition to this a large sum has since been saved for the ratepayers by its use in purchasing the Wakefield Street and High Street South properties, the Council thereby having avoided the payment of exorbitant prices. Any further advantage to the ratepayers, however, of this nature will now necessarily be at an end in consequence of the closing of the fund.

It may be briefly stated that the main object in the first instance was to provide the cost of a public library at Manor Park without burdening the resources of the library rate, limited by general law to a penny in the £, and at that time only producing a small sum over the annual cost of the Plashet Library. Mr. Carnegie's subsequent gift of £10,000 conditional to site being given removed the necessity of utilising the fund for the primary object.

As regards the position of Messrs. Wilson, Savage, and

Plant, we are of opinion that they were not trustees in the legal sense of the term implied in the law laid down by the auditor. These officers were merely nominees in whose name the fund was placed, they being more permanent than any individual members of the Council. This view is supported by counsels' opinion as follows:—

#### THE EAST HAM CORPORATION.

#### *Re* LOCAL GOVERNMENT BOARD AUDITOR'S REPORT.

#### SECRET TRUST FUND—SOLICITOR'S CHARGES.

#### JOINT OPINION OF MR. DANCKWERTS, K.C., AND MR. R. J. PARKER.

"We are of opinion that the view taken by the auditor was erroneous. We do not think that Mr. Wilson was a trustee at all in the transactions in question. At any rate, if he was in any sense a trustee he was not a trustee in such a sense as to make the equitable rule which precludes a trustee from making a profit out of the trust in any way applicable, but only a bare trustee bound to act under the direction of the Council and entitled to charge against the Council his proper profit costs of carrying out such direction."

(Signed) W. O. DANCKWERTS.  
R. J. PARKER.

21st December 1905.

The Committee further find that all financial transactions were simply carried out by the nominees as ordered by the Council in Committee.

Mr. Alderman Edwards was not a member of the Council when the purchase and sale of the land in Romford Road took place, and therefore did not (as incorrectly stated by the auditor) have anything to do with the original transaction.

He did not act as a nominee until some months after the surcharge and costs in *Rex v. Dolby* were paid, and consequently did not "apply moneys of the Council to meeting debts of individual members," as inaccurately suggested by the auditor.

Mr. Edwards first acted with other members of the Council in the purchase at the Auction Mart of the High Street South property—a transaction which the auditor does not question.

Whilst the creation of the trust fund may not have been a strictly legal one from the point of view of the Local Government Board, the whole of the transactions have been carried out in a perfectly proper and businesslike manner, resulting in great advantage to the ratepayers. Undoubtedly, had the Local Government Board been consulted, they would not have allowed the Council either to purchase or sell, and the Council would have had to dispose of their rights in the waste lands to the owners

of the land in the rear or to some speculator for any price they could have obtained, leaving to the purchasers the profit, which we find was about £2,207, plus the site of the Manor Park Library, valued at £750.

#### *The Profit not "Fictitious."*

With reference to the sentence in the auditor's report, commencing with the words, "The trustees profess to have made a profit, &c.," and characterising the profit as absolutely fictitious, we find that a profit of over £3,000 was in fact made, as appears from the Balance Sheet set forth on the last page of this report.

The expression "Fictitious profits" must mean profits which have no existence in substance or in fact, and the term used in this connection is tantamount to saying that the accounts were deliberately prepared with the intention of deceiving, and that the person preparing them either acted in sheer ignorance or was deliberately dishonest in describing the result of the transactions as profits.

The accounts of the nominees accurately and properly show the whole of the receipts and disbursements in connection with the "trust" operations.

With reference to the second transaction commented upon by the auditor, being the purchase of the Wakefield Street property, we find that here again a very considerable saving was effected in the ratepayers' interests. The property was purchased on behalf of the Council for £1,000, a portion being required for street improvements.

The Council fixed the price for the part to be given up for street improvements at £300, but before this sum could be paid a Local Government Board inquiry had to be held, to enable the Council to borrow the money to complete the purchase. At such inquiries the inspector of the Local Government Board requires evidence before him as to the land value. This evidence he had in the usual course, and approved the value. The property was, moreover, surveyed by the County Council before the sanction of this work and the making of their contribution thereto. It was not a "fancy price," but a fair and reasonable valuation, in which the Council were aided by the most competent advice.

It need hardly be pointed out that the School Board, in acquiring the remainder of the land for £750, had to go through much the same formula with the Education Department, and would not have been allowed to make the purchase had the price been a fancy one. As to the purchase of the property in High Street South, we do not gather from the auditor's remarks that he in any way impugns the transactions on the score of value. As a matter of fact, the property was suddenly thrown on the market and advertised for sale by public auction. The auctioneers stated in their particulars of sale that part of the property would be required by the Council for street improvements.

With respect to any sums paid to Messrs. Wilson & Son out of this fund, it is found that they were legally and morally entitled to such costs. As has already been

stated, the Clerk was not, nor ever had been, a trustee in the legal sense which would prevent his firm being paid the proper charges in the transactions in question. Such charges have all been regulated by the authorised scale, and had been submitted to and approved of by the Council in Committee before payment, and from the terms of the Clerk's appointment it is found that his salary was never intended to cover remuneration for such work, as it was quite outside the scope of his duty as Clerk to an urban sanitary authority.

The other moneys included in the sum of £596 6s. were the moneys surcharged upon the individual members of the Council, as stated by the auditor, and considering the total unreasonableness of the surcharge in question (viz., surcharging the repairs to the omnibus, after the surcharge for its purchase had been remitted), the Council considered that part of this fund might with justice be applied in the discharge of them, as the ratepayers could not wish the members so surcharged to be personal losers.

We cannot too strongly express our opinion of the impropriety of the wording of the auditor's report on this point, as it clearly suggests, if words mean anything, that private debts of members of the Council were paid out of the funds. The paragraph would have entirely lost its sting had the expression "surcharges on private members" been substituted for "private debts of individual members," and we cannot too strongly condemn the false, offensive, and misleading expression therein contained, which could not have been stronger had the Council sanctioned the payment of the rent or tradesmen's bills of the members concerned.

We trust the expression was not intended to be as wilful and maliciously misleading as it would appear to be.

At the request of certain councillors, but without admitting any liability to do so, Messrs. Wilson & Son, in order to save a further surcharge which was threatened by the auditor, have out of their own pockets paid to the Treasurer the sum of £644 19s.

With reference to the remark of the auditor that, in consequence of his inquiries, the High Street South property had been conveyed by Mr. Mills to the Council, it was not in consequence of his inquiries, but the members of the Council voluntarily informed him that they had decided to have all the property conveyed to them.

The Council's seal, referred to by the auditor as having been used without authority, was, by order of the Committee, used for the purposes of securing the nominees, and was not used by Mr. Wilson (our Clerk) without authority, but for reasons above stated the fact was not recorded in the Council's minutes. It is impossible for such seal to be used without authority, as the Chairman of the Council for the time being always holds one of the two keys required to open the seal.

Our Clerk was not a party to the concealment of the accounts from the auditor, as in the first place there was no concealment, and in the second place all the accounts of the Council have been submitted to the auditor by the proper officer from time to time. All payments made to his

firm from this fund were made with the previous approval and sanction of the Council, and the trust funds have not been applied to improper purposes.

With regard to the strictures of the auditor on Mr. Plant, we consider the accounts of the trust fund were not the accounts of the Council, and as such did not fall under the auditor's purview.

Mr. Plant presented to the auditor all the accounts of the District Council in his keeping as Treasurer and Accountant to the Council.

The other moneys included in the sum of £596 6s. were the moneys surcharged upon individual members of the Council with respect to the upkeep of the Council's omnibus and legal expenses in connection with the action of *Rex v. Dolby*. The facts in relation to which are briefly as follow:—

In 1898 the Council purchased an omnibus for the purpose of conveying members of the various Committees about to inspect works throughout the district.

#### *The Omnibus Surcharges.*

On the 30th June 1898 the auditor disallowed this expenditure. The members surcharged appealed to the Local Government Board, and the Local Government Board, while confirming that the auditor's decision was right in point of law, in exercise of their discretion and their equitable jurisdiction, remitted the surcharge upon the individuals named.

The Council having acquired the omnibus, it was imperative that the necessary repairs should be done, in order to protect the property of the ratepayers. Upon the following audit the auditor surcharged the costs incurred for the repair upon individual members, and application was made to the Local Government Board to remit the same, but this was refused.

The Council were then advised to contest the matter, but the surcharge by the auditor was upheld.

Under this heading the auditor goes out of his way to attack Mr. Fry's personal character, by stating that he—"deliberately framed his replies so as to lead the auditor to believe that he knew nothing of the transactions on the 'Special Trust Account.'"

This the Treasurer absolutely denies.

As early as May 1905 the auditor placed before Mr. Fry a document relative to the Council's accounts, and dealing with the secret trust fund, which he refused to sign, so that the auditor cannot charge Mr. Fry with subsequently admitting to him something which he had previously denied, and we do not hesitate to describe this as a most unwarrantable attack upon the personal character of a public official.

From what we know of Mr. Fry, we cannot but believe that the auditor has seriously misunderstood the whole position, and we have no hesitation in accepting the Treasurer's statement in this matter.

At the same time, we cannot too strongly condemn the

action of a district auditor (who is also a public official) sheltering himself behind an official document, in deliberately going out of his way to seriously damage the character and reputation of other public officials, whose conduct can bear the strictest investigation.

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## Local Accounts.

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### Their Uniformity and Standardisation.

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THE following letter appeared in a recent issue of *The Municipal Journal* :—

Sir,—Having by a sort of transmigratory progress, extending over some thirty years, passed through all the phases of local self-governing life, from highway board to municipality, may I be permitted to say a few words on this important matter—important as affording opportunity for the co-ordination of ascertained results for comparative purposes?

It is, of course, fully understood that from district councils downwards the necessary fundamental uniformity already exists, the method of keeping the accounts being the same all the way through.

Yet at this point it is that the complaint arises from some of the highest grade authorities that "receipts and payments" is not elastic enough for their needs, and, as a consequence, have discarded the term in favour of "income and expenditure," thus bringing into account moneys due and owing, without regard to their actual receipt and payment, forgetful, as it seems to me, that the yearly balancing of the books synchronises with the closing of the rates, as, also, that by arrangement with the tradespeople for the stoppage of deliveries for a brief period, coupled with a special meeting of the finance committee for the purpose, all unpaid indebtedness may be discharged. I am, further, strongly of opinion that for estimated non-trading expenditure intended to be defrayed out of rates levied, incised, and ear-marked for the purpose, receipts and payments is the proper term to use, and that income and expenditure is a philological inexactitude.

This also applies to loan capital expenditure and private street works, leaving the term "revenue and expenditure" to be suitably applied to the accounts of trade undertakings, and other works executed for profit-making purposes. I may, perhaps, be permitted here to say that on these lines—with the aid of an occasional Suspense Account—I have experienced no difficulty in dealing with all entries incident to the correct keeping of local authority accounts. And thus it is that, to my mind, the Local Government Board system is simply unique—a complete

evolutionary development, in process of which environment and special circumstance have played their accustomed part. The innerness of it is such that, given the correct filling up of Forms A and B, the Board can correctly gauge the true position of affairs, and, further, that for weighty reasons that could be adduced it is not expected that such eclectic survival be commercialised out of existence. I have been careful, therefore, to differentiate between the two methods so that no confusion or intermixture may arise.

It should not, then, be without the range of possibilities, taking the Board of Trade forms for models, to compile and agree upon standard forms of schedule for the several styles of municipal industry commonly engaged in. Upon these the annual reports would be published and from them all the necessary data for comparative purposes could be deduced.

Yours, &c.,

J. W. OLDFIELD,

Assistant to Borough Accountant.

239 High Street, Erdington, near Birmingham.

8th May 1906.

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## Personal.

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MR. ARTHUR B. BAYLEY, Chartered Accountant, announces that he has commenced practice as a Chartered Accountant at Milton Chambers, 10 Milton Street, Nottingham.

MR. A. L. COCKE, Chartered Accountant, has commenced to practise as a Chartered Accountant at 11 Pancras Lane, Queen Street, London, E.C. He was for over ten years with Messrs. ARTHUR J. HILL, VELLACOTT & Co., of 1 Finsbury Circus, E.C.

MESSRS. HANDLEY & WILDE, Chartered Accountants, of Bank of England Chambers, Tib Lane, Cross Street, Manchester, announce that they have taken into partnership Mr. ARTHUR RABY HANDLEY, A.C.A., son of their senior partner, Mr. T. W. HANDLEY. The firm will continue to practise under the same name as heretofore.

MESSRS. MARWICK, MITCHELL & Co., Chartered Accountants, of 79 Wall Street, New York, have opened new branches in the Drexel Building, Philadelphia, and in the Despatch Building, St. Paul. The Philadelphia office will be in charge of Mr. JAMES HALL, C.A., and the St. Paul office in charge of Mr. JOHN M. STUART, C.A.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, May 18th, was 216, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 118; Deeds of Arrangement registered, 98. The respective numbers in the corresponding week of last year were: Bankruptcies, 113; Deeds of Arrangement, 66—total, 179; being an increase of 37. The total number of commercial failures recorded during the 20 weeks of the present year is 3,369; the total number recorded in the corresponding 20 weeks of last year was 3,595, showing a decrease of 226.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, May 18th, was 142. The number in the corresponding week of last year was 176, showing a decrease of 34. The total number filed during the 20 weeks of the present year is 3,036; the total number filed in the corresponding 20 weeks of last year was 3,391, showing a decrease of 355.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, May 18th, amounted to £3,188,145, by way of addition to £1,725,045, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,015,061, showing an increase of £2,173,084. The total amount registered during the 20 weeks of the present year was £34,966,244 (in addition to the issues in previous years by the same companies), as compared with £29,663,601 for the corresponding 20 weeks in 1905, showing an increase of £5,302,643.

**BANKRUPTCY COMMITTEE.**—Among the witnesses invited to give evidence before this Committee is Mr. Jas. Todd, Chartered Accountant, of Preston, Blackpool, and Manchester, who has had considerable experience in bankruptcy work.

## Meetings for the ensuing Week.

*Tuesday, Wednesday, and Thursday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—Final Examination, commencing first and second days at 10.30, and third day at 11 a.m.

*Tuesday*—INSTITUTE OF CHARTERED ACCOUNTANTS.—General Purposes Committee, at 3 p.m.

## The Profession in Scotland.

### Personal.

Mr. Albert E. R. Copeland, C.A., 196 St. Vincent Street, Glasgow, has assumed as partner Mr. Robert Allan, C.A. The co-partnership will be continued under the firm name of Copeland & Allan.

### Obituary.

The death took place last week, at the ripe old age of 77 years, of Mr. Richard Wilson, C.A., 28 Great King Street, a well-known Edinburgh citizen. He joined the Edinburgh Society of Accountants so long ago as 1855, a year after its incorporation, and at his death was thus among its oldest members. He was for long connected with St. Luke's Masonic Lodge, having held high office at one time, and he served a short term of years in the Town Council. In politics he was a Conservative, and before the last redistribution of seats rendered the cause and candidates important assistance. He retired from business many years ago. He is survived by a widow.

## The Profession in Ireland.

### The Institute of Chartered Accountants in Ireland.

THE quarterly meeting of the Council was held at the offices of the Institute, 4 College Green, Dublin, on 9th inst., Mr. Robert Stokes (President) in the chair. There were also present Messrs. William Fitzsimons, J. Edgar Magill, J. McCullough, M. Shaw, Robert Walsh (Belfast), M. Crowley, J. M. Kean, N. G. Peterson, J. Harold Pim (Dublin), Edward McCarthy (Cork), and C. G. Mitchell (Assistant Secretary).



The minutes of the last meeting having been read and signed, the following were elected Associates, viz.:—In practice, Hugh Boyd, Belfast; William C. Peterson, Dublin. Not in practice, William Ware Walker, Belfast; C. H. W. M'Cullough, Belfast; N. Peterson, Junr., Dublin.

Numerous applications having been received for the forthcoming examinations, it was decided to hold same on the 20th, 21st, and 22nd June concurrently at Dublin and Belfast.

The usual quarterly business having been transacted, the meeting terminated, and the eighteenth annual general meeting was held, Mr. Robert Stokes in the chair. There were also present Messrs. T. Geoghegan, F. E. Grubb, A. Klingner, J. Mackie, C. G. Mitchell, D. Telford, J. H. Woodworth, W. H. Woodworth (Dublin).

The notice convening the meeting and the minutes of the last meeting having been read, Mr. Robert Stokes stated that he attended in London another meeting of the Joint Committee of Chartered Accountants in June last, but could not say that very much had resulted from the Committee's deliberations up to the present. At the same time it would be seen from the address of the President of the English Institute that, although moving slowly, they had several matters under consideration. He then gave a short description of the doings and progress of the Institute during the year, and then moved the adoption of the report and accounts, which was seconded by Mr. Robert Walsh, and carried unanimously.

The following are the

#### REPORT AND ACCOUNTS.

The Council, in submitting their Eighteenth Annual Report and Statement of Accounts for the year ended 31st December 1905, are pleased to report that the Income and Expenditure Account shows a surplus of £62 9s. 5d.

Examinations were held at Dublin and Belfast during the months of June and December. Twenty-four candidates presented themselves, viz:—

8 Preliminary, 2 Intermediate, 14 Final.

In the Preliminary Examination, five candidates passed, and three failed; in the Intermediate, all the candidates were successful; in the Final, nine candidates passed and five failed.

There were three Articles of Clerkship registered during the year, making the total number of articulated clerks registered to be 68.

Five candidates were admitted to membership as Associates, viz:—

One in Practice, and four not in Practice.

The total number of members at the close of the year was 68, as follows:—

Fellows in Practice	..	..	..	23
Associates do.	..	..	..	33
Do. not in Practice	..	..	..	12
				<u>68</u>

Your Council have to report that they excluded one member during the year under Bye-law 104 for advertising.

The following members of the Council retire:—Messrs. M. Crowley, N. G. Peterson, Robert Walsh, and J. H. Woodworth, but all are deemed to be nominated for re-election under Bye-law 6.

The Hon. Secretary and Treasurer, Mr. J. Harold Pim, and the Auditors, Messrs. William Mayes and W. H. Woodworth, retire, and offer themselves for re-election.

By order of the Council,

J. HAROLD PIM,  
Hon. Secretary and Treasurer.

4 COLLEGE GREEN,

DUBLIN, 21st April 1906.

Dr.

INCOME & EXPENDITURE ACCOUNT for Year ended 31st December 1905.

Cr.

<i>Expenditure</i>		£	s	d	£	s	d
To Rent	.. .. .	30	0	0			
" Advertising	.. .. .	3	12	8			
" Printing and Stationery	.. .. .	28	1	2			
" Travelling Expenses	.. .. .	53	11	2			
" Examiners' Fees	.. .. .	110	15	6			
" Office Expenses and Sundries	.. .. .	45	16	8			
" Grant to Belfast Office	.. .. .	10	0	0			
" Law Costs	.. .. .	16	11	4			
" Joint Committee of Chartered Accountants	.. .. .	4	12	5			
" Amount now written off for Depreciation on Office Furniture, Fittings, and Library	.. .. .	10	0	0			
					313	0	11
" Balance, being excess of Income over Expenditure for this year, carried to Balance Sheet	..		62	9	5		
					<u>£375</u>	<u>10</u>	<u>4</u>

<i>Income</i>		£	s	d	£	s	d
By Entrance Fees—							
5 Associates, at £10 10s.	.. .. .	52	10	0			
" Annual Certificate Fees—							
23 Fellows at £5 5s.	.. .. .	120	15	0			
32 Associates at £3 3s.	.. .. .	100	16	0			
1 Associate for Half-year	.. .. .	1	11	6			
" Arrears 1903-4	.. .. .	6	6	0			
					229	8	6
" Annual Subscriptions—							
10 Associates at £1 1s.	.. .. .	10	10	0			
2 " for Half-year	.. .. .	1	1	0			
" Examination Fees	.. .. .				11	11	0
" Interest on Investments	.. .. .				42	0	0
" Rent	.. .. .				30	0	0
					<u>£375</u>	<u>10</u>	<u>4</u>

## BALANCE SHEET, 31st December 1905.

<i>Liabilities</i>				<i>Assets</i>			
	£	s	d		£	s	d
Sundry Creditors .. .. .				£300 Dublin Corporation Stock, cost .. ..			
			134 2 3	(Market Value at this date, £286 10s. od.)			320 12 0
Income and Expenditure Account—				£212 5s. 9d. 2½% Consols, cost .. ..			200 0 0
Balance at 31st December 1904 .. ..	810	16	10	(Market Value at this date, £189 4s. od.)			
Add—				£219 14s. 6d. Guaranteed 2½% Stock (Irish Land			
Excess of Income over Expenditure for Year				Act, 1903), cost .. ..			200 0 0
ended 31st December 1905 .. ..	62	9	5	(Market Value at this date, £198 14s. 3d.)			
			873 6 3	Furniture, Fittings, and Library—			
				Dublin .. ..	85	2	0
				Belfast .. ..	15	0	0
				Additions during year .. ..	18	14	11
					118	16	11
				Less Amount written off .. ..	10	0	0
							108 16 11
				Stock of Stationery, Bye-laws, and Examination			
				Papers, estimated .. ..			10 0 0
				Sundry Debtors for Rent .. ..			5 0 0
				Dividends accrued due .. ..			8 15 3
				Cash in National Bank, Limited .. ..	143	6	11
				“ hands of Hon. Treasurer .. ..	10	17	5
					154	4	4
					£1,007	8	6

We have examined and vouched the foregoing Accounts, and find same to be correct.

Dublin, 10th April 1906.

WILLIAM MAYES, } Auditors.  
W. H. WOODWORTH, }

The following officers were unanimously re-elected, viz.:—President, Mr. Robert Stokes; Hon. Secretary and Treasurer, Mr. J. Harold Pim; Auditors, Messrs. Wm. Mayes and W. H. Woodworth.

The following retiring members of the Council were also unanimously re-elected, viz.: M. Crowley, N. G. Peterson, R. Walsh, and J. H. Woodworth.

With a vote of thanks to the Chairman the meeting terminated.

## The Last Days of the old San Francisco.

It was to the tune of crashing chimneys, breaking glass, rocking chairs, tumbling bottles, and falling clocks that most of us jumped out of bed at 5.15 a.m. on the day of the earthquake which proved to be the destruction of that great and noble city—the beautiful San Francisco. At first blush one would have been justified in thinking that Doomsday had actually arrived in the twinkling of an eye. Something unusual was happening, as the place was shaking beyond all imagination, and, being located on the fifth floor, I got the full benefit of the excitement. Had any man offered me two pins for my life at that moment I think I would have referred him to Stevens' "Mercantile Law": "a contract without consideration is not binding." There would have been no time to get downstairs, so the only thing to be done was to sit tight and pine for Swan Alley.

The shock had soon passed. Twenty-eight seconds was the duration, we are told; but to most of us it seemed at least 29. Hastily I donned dressing gown and slippers, and went out into the street. One man had nothing but a night-shirt on; ladies had only their dressing gowns, and many no slippers; everyone was only half dressed. A huge brick building on the opposite side of the road was cracked from top to bottom, and in all directions the chimneys were off. Fires were breaking out in many parts of the town. After one or two more little quakes we became more confident, and returned to our rooms to dress. The gas, electric light and power, and water supply were all out of order.

It was about twenty minutes after the shock that I started off down the street. The sight was terrible: every chimney fallen; almost every brick building badly damaged; window panes smashed, and about six fires in progress in various parts of the town. The two corner turrets of a theatre had fallen on to the two adjoining wooden buildings, completely smashing them. At least one person was killed. In the business part of the town, where the buildings were mostly brick or stone, the streets were covered with masonry, and it was clear that tremendous damage had been done.

At the foot of the street a whole block of shops and offices was in a blaze, and was starting all the other blocks round it. The hose was brought up, but there was no force; nothing could be done to save the places. It was now merely a question of moving the people back every time another block caught fire. In the lower part of the town, where the land is all "made ground," the earthquake

had been severely felt. In places the footwalk had sunk two or three feet down from the houses, and the iron frames of cellars stood up that far above the pavements. The roads were badly damaged.

It was soon clear to all of us that we were to witness a tremendous fire. In all directions the fires were increasing, and still there was no water supply. In my wanderings I came across one wooden structure which had collapsed. Soon after I arrived at the spot a negro was pulled up legs first out of his bed. There was a look of surprise on his face as he came to the light, and honestly I had never seen a negro look so white. It was a surprise to all of us that he was alive. At another cheap lodging-house which had collapsed it was thought that thirty persons were buried. Six of these had been pulled out when the rescuers had to beat a hasty retreat. The wall of the adjoining house crashed down, and in a few minutes the place was eaten up by fire. One man, who had one leg caught, had to be abandoned in the flight.

Well, I must pass on. Any one of us could probably fill a book with our experiences of those few days. The first night I slept out on a vacant plot, with a bale of straw for a mattress, and with four horses just behind me. On the second I made a sand dune in one of the parks serve me for a bed, but during the night some of the heaviest blasting was being done, which proved to be rather a disturbance. The next day, wishing to send off a cablegram, I crossed over to Oakland, leaving practically all my possessions behind. My box I had buried in the sand, but the last time I went to the spot there were so many others buried round it that I could not tell which was mine. The place was like a graveyard. It was with absolutely nothing to my name, except a little cash, that I learnt there was no chance of being permitted to return to San Francisco. The next day therefore found me with a free pass for a two days' railway journey, and the prospect of living on charity. Only a week before I was travelling over the same metals in one of the finest trains in the States, living like a king, and as happy as they are made.

"Times change in many ways, and we with time."

A.C.A.

**FAME!**—During the recent elections for the Bavarian House of Representatives—so runs a story told in the German papers—two voting tickets were addressed by different political agents to "Herr Siegfried Wagner, 'Accountant (Kontorist), 48 Richard Wagner Street, 'Bayreuth.'" They duly reached the distinguished musician for whom they were intended, and caused him no little bewilderment. When he came, however, to exercise his electoral right, he found to his great astonishment that the vocation named was also imputed to him in the official register of voters. The clerk to whom the preparation of the list had been entrusted had apparently never heard of the profession of composer (Komponist), and had assumed that it must be a mistake for Kontorist.

"THE ACCOUNTANTS' JOURNAL."—The first number of the new volume has just been issued, and consists of 52 pages, together with the index to the last volume. The following are some of the subjects included in this number:—Reform of the Law Relating to Insolvencies. Types of Railway Mortgages. Notes and Notions. Some Legal Terms—Property and Possession. Summarised Law Reports. Reviews. Contemporary Thought. Points for Beginners. Prize Competition. Articles of Association. Overheard in the Office—Executorship Accounts. Reconstructions, by G. A. Touch, C.A. Faults in the Companies Acts, by G. H. Boucher. A Faculty of Commerce in relation to Accountants, by Prof. Chapman, M.A. The Rights of Partners *inter se*, by S. S. Dawson, F.C.A. Profits and Dividends, &c. &c.

### Bank Rate of Discount.

Sept. 28th 1905	..	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	..	3½%
May 4th ..	..	..	..	..	..	..	4%

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# The Accountant

THE RECOGNISED WEEKLY ORGAN OF CHARTERED ACCOUNTANTS  
AND  
ACCOUNTANCY THROUGHOUT THE WORLD.

VOL. XXXIV.—NEW SERIES.—No. 1643.]

SATURDAY, JUNE 2, 1906.

[PRICE 6d.]

Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

*Licensed Houses* present some rather special features. The goodwill attaching to the license gives the lease or freehold of licensed premises a market value greatly in excess of their real value as buildings. To be properly considered, the value of the premises and the license must be separated. The former should be depreciated in the usual way, leaving the license alone to be considered. A license on freehold premises does not depreciate, but a license on leasehold premises passes away with the premises and must therefore be depreciated like a lease. A license may at any time be lost—either for misconduct or for no reason—but this is a contingency outside the scope of depreciation. It may, however, be provided against by insurance, which would appear to be a most prudent course to adopt.

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**BOROUGH ACCOUNTANT'S DEPARTMENT.**

## **JUNIOR AUDIT CLERK.**

THE Finance Committee of the above Council are prepared to receive applications for the above appointment at a commencing salary of £70 per annum. Candidates, who should not exceed the age of 25 years, must apply in their own handwriting, stating age, qualifications, and particulars of past experience, and when they could commence their duties if appointed, so as to reach these offices not later than the 13th of June next, in an envelope endorsed "Audit Clerkship," together with copies of three recent testimonials. Preference will be given to candidates who have had experience in Auditing, either in a professional accountant's office or elsewhere.

LIONEL WALFORD,  
Town Clerk.

Council Offices,  
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29th May 1906.

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**Leading Articles.**

**Official Receivers as Chairmen at First  
Meetings.**

ALTHOUGH, as will of course be well-known to our readers, we are no friends of official methods, and although from time to time we find it necessary to criticise somewhat severely the attitude adopted by Government employees at Whitehall and at Carey Street towards professional accountants, we have

always been in the habit of taking it for granted that such faults as might be found with official administration were the faults of the system, and not of the individual. That being so, we were greatly surprised to read in a recent issue of the *East Anglian Daily Times* the report of the first meeting of the creditors of one ALFRED SUCKLING at which Mr. F. MESSENT, Official Receiver, presided.

According to our contemporary it appeared that, in consequence of some admissions made by the debtor at a private meeting of his creditors, objections were lodged against two proofs which were put in for comparatively large sums, on the ground that the persons making those proofs were, or at least might be found to be, partners of the debtor, and that therefore it was not proper to admit such proofs for voting at a first meeting. The Official Receiver, however, decided to admit the proofs for voting, but to mark them "Objected to." He refused, however, to put the grounds of the objection on the proofs.

A creditor shortly after took exception to Mr. WILLIAM MESSENT being present at the meeting, whereupon the Official Receiver stated that he was there as a candidate for the trusteeship, like others. He went on to say that as this case appeared to have excited considerable interest and there were special proxies for five different candidates, not knowing two or three of these he wrote to them for particulars of any trusteeships that they had held. Three of them answered, and Mr. FLAXMAN HAYDON, A.C.A., had wished his reply to be read at the meeting. The Official Receiver thereupon read the letter which he had received from Mr. HAYDON, who

appeared to strongly resent the questions he was asked, and further stated that he had sent Mr. MESSENT's letter and his reply to the Board of Trade. Our contemporary goes on to say that the voting for the post of trustee resulted in the election of Mr. WILLIAM MESSENT, of Ipswich.

We do not attach much importance to the refusal of the Official Receiver to mark the proofs objected to with the nature of the objection stated, for this omission of itself will place no difficulty in the way of an appeal to the Court should any of the creditors concerned deem such a course desirable. We cannot see how any objection can be raised to someone of the same name as the presiding Official Receiver being a candidate for the trusteeship, for it would indeed be hard if the mere fact that one had as a relation an Official Receiver should *ipso facto* act as a disqualification for the post of trustee. But although upon all these points we think that the indignation evident at this meeting was of a misdirected character, the alleged action of the Official Receiver in writing to the various persons who had been nominated by special proxies for the trusteeship, and inquiring of them as to their qualifications for the post, is objectionable. It is absolutely no part of an Official Receiver's duties to make such inquiries, and unauthorised inquiries made by an official in his official capacity may be justly resented as unwarrantable. Moreover, the Official Receiver, as such, has nothing whatever to do with the confirmation of a trustee's appointment. That duty devolves upon the Board of Trade, which, if it thinks necessary, is quite able to conduct its

own inquiries. Such inquiries ought to be, however, and in fact usually are, confined to his financial standing and repute. It is for creditors to judge who is best fitted, from the business point of view, to act as trustee of an estate, and the veto of the Board of Trade is directed solely towards protecting the business community against dishonest or impecunious trustees. Mr. FLAXMAN HAYDON's complaint will, we hope, receive that attention at headquarters which it undoubtedly deserves.

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#### The Rights of Partners *inter se*.

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THE paper by Mr. SIDNEY S. DAWSON, F.C.A., under the above heading, which appeared in our issue of 7th April, and which was read at meetings of Chartered Accountants Students' Societies held at Sheffield, Birmingham, and Liverpool, deals with a matter of considerable interest to which a good deal of attention has already been given in these columns comparatively recently. It may be questioned, however, whether it represents a sufficiently comprehensive or a sufficiently novel basis to stand alone as the subject for a Students' Society lecture.

Mr. DAWSON starts with referring to the paper read by Mr. T. A. WELTON, F.C.A., at an Autumnal Meeting held at Liverpool in 1904, which has already been very fully discussed, and then proceeds to discuss the views expressed by Professor DICKSEE in his "Advanced Accounting" under circumstances which are not identical with the data assumed by Mr. DAWSON. As a means of instructing the uninitiated it is difficult

to conceive anything more confusing than the presentment of a series of alternative methods, of which, in the nature of things, only one can possibly be correct. We are not indeed quite sure that we ourselves understand the view the lecturer is desirous of putting forward as his own and as the correct one; but, if we do understand him aright, we may say that if the facts are to be taken as stated by him we can find no fault with what we believe to be his conclusion—namely, that the respective capitals of partners in a firm must be taken not as being the amounts which they each brought into the firm in the first instance, nor yet the balances standing on their Capital Accounts after the books have been completely written up to date, but the balances standing on their Capital Accounts at the date of the last Balance Sheet mutually agreed by the partners. Bearing in mind, however, that the practice of partners signing their periodical Balance Sheets is far rarer in practice than in theory, it would, we think, be somewhat unsafe to assume as a matter of course that the last periodical Balance Sheet was necessarily the one to determine the respective capitals of the different partners. If it be a fact that in *Garner v. Murray* the Master certified that the sums due to the plaintiff and defendant were £2,500 and £314 respectively, it occurs to us to suggest that the probabilities are greatly against the Capital Account of any partner appearing at an even figure like £2,500 at the date of any periodical Balance Sheet, which seems to place a further difficulty in the way of accepting this theory. But inasmuch as the partners' respective capitals at the start were £2,500 and £1,000 respectively, it is clear

that the figures said to have been certified by the Master were not the starting figures. It would be of interest, as finally clearing up any doubt and leaving no room for imagination or surmise, if some of our readers could tell us exactly how the balance available *was* divided between the plaintiff and defendant in *Garner v. Murray*, for at the present time—although Mr. DAWSON's suggestion is doubtless the most probable—the wording of Mr. Justice JOYCE's judgment is far too involved for the point to be regarded as altogether free from doubt.

Another point which strikes us as being of some interest is as to whether the last mutually agreed Balance Sheet is to be in all cases regarded as conclusive, irrespective of the actual facts of the case. For instance, it is quite conceivable that in preparing the Balance Sheet a debt due by one of the partners to the firm might have been treated as an ordinary book debt instead of being charged against his Capital; or, in the alternative, it may have been charged against his Capital Account before preparing the Balance Sheet, thus reducing the balance standing to his credit thereon. We should like to know whether it is considered that the decision in *Garner v. Murray* clearly settles that on a dissolution the ultimate basis of division of assets is to be affected in any way by the question as to how a debt due by a partner to the firm has been dealt with prior to the taking out of the last Balance Sheet. For ourselves we incline to the view that, the Balance Sheet having once been agreed, it must be regarded as a settled account, which, save on the ground of fraud, cannot be reopened; but, if that be the case, it is obvious that the precise treatment of such common transactions as that which we have just referred to may be

of far more serious import than is frequently imagined.

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#### The Society of Accountants and Auditors.

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THE twenty-first annual general meeting of the Society of Accountants and Auditors was held at Salisbury House on the 24th ult., when Mr. W. G. RAYNER, the President, occupied the chair. In the course of his address Mr. RAYNER mentioned that the total number of members on the roll at the close of 1905 was 2,111, of whom 809 were Fellows, 1,215 Associates, and 87 student members. With regard to the examinations he said that the total number of candidates in 1905 had been 289, of whom 210 had passed and 79 failed. The percentage of passes, he added, was somewhat higher than in the two previous years, but this was not owing to any lowering of the standard of qualification set by the Examination Committee, but was due entirely to the candidates themselves. It is extremely difficult to generalise thus, as any experienced examiner would be the first to admit; but, however that may be, examinations which turn back less than 25 per cent. of the aggregate number of candidates can hardly, under even the most favourable conditions, be regarded as particularly exacting.

Not altogether unnaturally the Society, as voiced by its President, views with disapproval the appointment of a Departmental Committee to inquire into the accounts of local authorities which so far departs from the recommendations of the Joint Select Committee on Municipal Trading of 1903 as to omit any specific representation of the Society itself. This is a grievance which was made a good deal of at the time by the Society's

official organ, but apparently the Council have now decided to make the best of a bad job, for we find that the President draws attention to the fact that two of the members of that Committee—namely, the City Controller of Liverpool and the Accountant to the Wallasley District Council—are members of the Society. From the point of view of the Local Government Board it must, we think, in all fairness be admitted that this represents a somewhat liberal representation of the Society, both as representing a section of the practising profession and as representing a section of municipal accountants, although, no doubt, a more advantageous selection would have been one member from each section; but bearing in mind that Chartered Accountants—who, when all has been said and done, represent the preponderating influence—are only represented by a single member, it is clear that the Society has nothing whatever to complain of.

With regard to the Bankruptcy Committee, we agree that there is an undesirable preponderance of the official element, although the preponderance has been considerably less overwhelming than we had at one time been led to fear, but while the Society, as including among its members a large number of municipal employees, is certainly entitled to have its views represented on an inquiry as to the accounts of local authorities, it must be admitted that it includes no practitioner of first-class insolvency practice, and therefore its claims to representation upon the Bankruptcy Committee are quite insufficient to entitle it to separate representation, more particularly upon a Committee of such workably small numbers as that appointed by Mr. LLOYD GEORGE.

On the subject of legislation for the profession itself, we regret that the Society, speaking,

through its President, should not have seen its way to fall in with the eminently reasonable proposition put forward by Mr. JOHN GANE, F.C.A., at the annual meeting of the Institute a month ago. Mr. GANE, when referring to the Chartered Societies' Bill, and to the attitude adopted towards it last year by the Society of Accountants and Auditors, said that it was absolutely for the protection of the public that there should be further legislation to prevent persons from falsely representing that they were members of a Chartered Society, whether of accountants or others, and that it was difficult to understand how anyone could find a legitimate reason for opposing it. "If," he added, "the Society of Accountants and Auditors will introduce a Bill with similar objects for protecting its own members, I feel justified in stating that this Institute will agree not to oppose it, provided that the Society will likewise agree that its opposition to the Chartered Societies Bill shall cease." In view of certain litigation now pending one would have thought that the Society might have seen here a possible *modus vivendi*; but the views of its Council, as expressed by Mr. RAYNER, are that they are "not going to allow a Bill the principle of which they do not approve to go forward on a promise that if they introduce something of a similar nature later on it will not be opposed by the Institute." The Society thus, it seems to us, places itself in the entirely false position of disapproving "on principle" of the proposition that it is only right, fair, and honest that persons who falsely represent themselves to the public as being members of a learned Society, of which in point of fact they are not members, should be capable of being restrained by a prompt and inexpensive process of law from continuing to perpetrate



that fraud. We are, of course, aware that the Society has given somewhat more detailed reasons for its objection to the Chartered Societies' Bill, and those reasons have already been stated *seriatim* in these columns, but if it is going to be seriously suggested that the "principle" of the Bill is not approved of, its principle can only be correctly stated in the form in which we have stated it above. Stripped of all verbiage, it would thus appear that the Society's standpoint amounts to this—that it will block all attempts at legislative reform which do not place its members upon a substantial equality with Chartered Accountants. If the Society has any confidence in the *personnel* of its members it would, we think, be better advised not to indefinitely delay reform for so unreasonable a purpose. If its members are in fact equal to the members of the Institute, it is unnecessary for them to go to Parliament for any corroboration of the fact. If, on the other hand, they must collectively occupy, as we think they must, a secondary place, then no Act of Parliament can by any possibility improve their position. Of recent years the Society has by its own unaided efforts enormously improved the collective standing of its members—and for that improvement it is entitled to all possible credit, which will doubtless be freely recognised by impartial persons in the course of the present year, when it attains its majority—but it will, in our view, be simply defeating its own ends if, under the mistaken hope of accomplishing them the more promptly, it acquires a reputation for mere selfish intrigue. The time has now surely come when the Society can afford to do what perhaps it could not afford to do a dozen or so years ago—namely, strike boldly for the improvement of the accountancy pro-

fession as a whole without self-seeking and without fear of consequences; and we feel sure that if it abandons its obstructionist attitude of the past it will find the great majority of opinion among Chartered Accountants to be overwhelmingly in its favour. If, however, it cannot rise to the occasion, it may truly delay a comprehensive and equitable scheme of legislation for the profession as a whole, but for obvious reasons the most serious disadvantages of that delay will of necessity be experienced by its own members, who naturally will feel the competition of unqualified practitioners far more seriously than Chartered Accountants.

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### Weekly Notes.

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#### Barristers and their Clients.

In reply to a question asked in the House of Commons concerning the desirability of introducing legislation to make barristers who accept retainers on behalf of litigants and fail to appear liable in damages for breach of contract, the Attorney-General expressed the opinion that such legislation would be neither necessary nor desirable. Inasmuch as there is, under existing conditions, no contract between a barrister and his client, there would undoubtedly be considerable difficulties in the exaction of damages for breach of that which is non-existent, even under the sanction of an Act of Parliament, but technical difficulties apart, as Sir J. Lawson Walton pointed out, the difficulty only arises in practice because litigants will insist upon briefing a few noteworthy members of the Bar without making the least inquiry as to whether they are capable of undertaking the business or not. So long as the public regards the mere name of an absent barrister as more valuable than the services of one who is present, there would appear to be but little to complain of at the present time. When, if ever, the public wants something more solid for its money, it has only to take the trouble to ascertain who is both competent and able to undertake its business. In the meanwhile, however, a middle course which has often been followed with success is

to make a special arrangement that if the barrister briefed does not appear in Court he will return his fee.

#### At Notes.

A correspondent of *The Financial News*—in the course of a long letter to that journal, probably suggested by the paper of Mr. Sykes, briefly noted in our issue of the 19th ult.—expresses the opinion that a note of the value of £1 would be welcome to the people of England, provided it were issued under conditions which ensured its ready convertibility. It is said that more than 50 per cent. of the notes issued by the banks established in the Australian Colonies consist of £1 notes, while in Scotland (where the £1 note, thanks to the cudgels of "Malachi Malagrowthe," still exists) one-half the average circulation of £6,000,000 is thus taken up. It is estimated that the advent of the £1 note in England and Wales would set free between fifteen and twenty millions sterling, and although it is agreed that this would not increase the gold reserves, it would "place those reserves in an inviolate position, and make them more serviceable than they meantime are." It is evident that the writer has great hopes of the new Chancellor of the Exchequer, who is deemed to be anxious to make his mark upon banking legislation; and before the subject is finally dismissed he trusts "a more palatable excuse will be found for throwing the suggestion over than the stereotyped "one that the people of England will have nothing to do with it."

#### Institute of Secretaries' Annual Dinner.

The annual dinner of the Chartered Institute of Secretaries took place last week at the Midland Grand Hotel, King's Cross, under the chairmanship of the President, Mr. Alexis L. Charles. He was supported by Sir Richard B. Martin, Sir John R. Paget, the Hon. George Colville (Secretary of the Institute of Chartered Accountants), Major Gratwicke (President Institute of Journalists), Sir Ernest Clarke, Mr. J. A. Torrens Johnson (Secretary Share and Loan Department, Stock Exchange), Professor Dicksee, and other distinguished guests. In proposing "Success to the Chartered Institute of Secretaries," Sir Richard Martin enlarged upon the great importance of the work the Institute was doing in training a most useful and necessary body of men to whom one could look for information on

practically all subjects connected with municipal, commercial, and financial life. In responding, the President returned thanks for the manner in which the toast had been received, and said that it was a matter of great congratulation that there had been a large and rapid increase in the number of members during the past twelve months, and that it was now a matter of anxiety on the part of most gentlemen connected with secretarial work to become members. Songs and other musical numbers brought a pleasant evening to a close.

#### Contracts with Statutory Corporations.

The decision of the Court of Appeal in *Corbett v. South-Eastern and Chatham Railway Companies' Managing Committee* should be carefully noted. Defendants agreed, in connection with a large building scheme in which plaintiff was interested, to discontinue the use of a certain station and to erect another at a different place on certain conditions. It was subsequently found that there was a clause in a statute under which, for the benefit of an adjoining landowner, the station could not be closed or moved. The defendants refused, therefore, to carry out the agreement, which they alleged to be *ultra vires* and therefore void. In an action for damages this view was upheld by the Court of Appeal, Lord Justice Romer (who agreed with the judgment of Mr. Justice Farwell) dissenting. It appears that a person contracting with a statutory corporation should satisfy himself that the proposed contract is not outside the company's powers.

#### The Shareholder and his Stamps.

A correspondent of a financial morning paper writes to complain of the waste of stamps and correspondence in some modern reconstructions. He instances a case of a company reconstructed "on a 17s. basis on 6d. terms." One pays 6d. on application, 6d. on allotment, and four calls to follow. The shareholder thus pays 6d. in stamps, and the bank pays a like sum in sending receipts. Then, having accumulated this mass of documents, one has to look up the old certificate, file receipts, send letter of allotment to the secretary, who ought to have done the whole thing himself. One more stamp. When the secretary pleases he will send a new certificate and ask for receipt. If granted, two more stamps. Hence fifteen stamps, besides stationery: fifteen stamps, 1s. 3d. out of 3s. Cannot directors offer 5 per

cent. discount for cash, paying up the whole? It must be a poor company that cannot earn 5 per cent. on cash.

**Trading Profits  
and Relief of  
Rates.**

Our contemporary *The Municipal Journal*, which is apparently so constituted that it is obliged to take everything seriously, devotes nearly a column to explaining how it is that rates are relieved by the profits from municipal enterprises, although the relief does not take the form of an actual dividend paid to the ratepayers. It does not, of course, require any very great knowledge of arithmetic to show that "if rates which in the 'ordinary course' of events would increase twopence 'are relieved by a penny, say from tramways—the net 'increase being a penny—the ratepayer gets relief to 'the extent of a penny from what is called 'municipal 'trading.'" Assuming the "if," all the rest is obvious. The point, however, to which our contemporary was invited to address itself was this, that as soon as there is reasonable ground for supposing that (say) tramway profits will equal the rate of one penny in the £, there appears in general to be a look round with a view to seeing how that penny can be best spent, with the result that it usually seems to be found that expenditure involving an additional twopence or so is found to be urgently necessary. It is pointed out, however, with pride, that half this expenditure is met out of trading profits, and that, therefore, the ratepayers ought to be very content that the net increase is only one penny. The whole crux of the matter is as to whether, if there had not been that penny profit, it would have been found necessary to spend the twopence.

**The Cardiff  
Treasurership.**

We are glad to be able to announce that the Cardiff City Council has appointed Mr. John Allcock to the position of City Treasurer, Comptroller of Accounts, and Superintendent Assistant Overseer, for which applications were invited through these columns a short time since. Mr. Allcock, who is a Fellow of the Society of Accountants and Auditors, commenced his business career as a junior clerk in the offices of the Nottingham City Accountant some 24 years since. Upon leaving his native town after eleven years' service, he was appointed Assistant Borough Accountant at West Ham, and a few years later Borough Accountant, Registrar of Stock, and Assistant

Overseer at Eastbourne. While at Eastbourne, Mr. Allcock compiled the work on Municipal Accounts, which forms Vol. XXI. of the "Accountants' Library" series, and is doubtless therefore familiar to the majority of our readers. As we pointed out a short time since, the measure of success attending Cardiff's awakening to a proper sense of its financial responsibilities will be largely dependent upon the personality of the man appointed at the head of its affairs. It is satisfactory to note that after a somewhat checkered career the Cardiff Corporation has at last created a post carrying with it a salary somewhat more in proportion to the responsibilities involved, and has, by a large majority, selected a really able and experienced man to fill the position so created.

**Frankness and  
Directors.**

Directors, as a rule, appear to be more anxious to cover up than to expose, but a recent reconstruction is a notable exception to the general rule, and one that might point an obvious moral. It is proposed to reconstruct with a capital of £1,000 in 240,000 shares of one penny each! The explanation of the small denomination is "to make the 'nominal value of the share equal to its market value, 'which is believed to be practically nil." Such frankness quite takes away one's breath!

**Lady  
Accountants.**

*The Daily Chronicle*, among other of our contemporaries, is responsible for the statement that the newly-formed Institute of Accountants and Bookkeepers, of which Sir Albert Rolit is the President, and Mr. J. H. Yoxall, M.P., Vice-President, is the pioneer of the movement for allowing ladies to enter the ranks of professional accountancy, and goes on to say that the Institute admits members of approved practical experience or "on passing examinations equivalent to those of the Chartered Accountants, and grants diplomas." The capacity of this newly-formed Institute to admit anyone to the ranks of professional accountancy seems well indicated by the fact that neither its President nor its Vice-President, well known though their names may be, ever have been, or ever are likely to be, members of that profession. As to its examinations being equivalent to those of the Chartered Accountants, it may be pointed out that that at least yet remains to be seen, inasmuch as so far as we are aware

no examinations have yet been held. For what it is worth, however, we may mention that we are informed that Professor Dicksee was approached with a view to seeing whether he would undertake to act as examiner, and laid it down as a preliminary condition that he should be entitled to prescribe the standard. We note that (possibly as a result of this stipulation) the Accountancy and Auditing member of the Examining Board is an Associate of the Society of Accountants and Auditors.

**Undischarged Bankrupts.** *The Financial News* states that less than 150 years ago any person opposing the discharge of a bankrupt was bound to pay such bankrupt, so long as the opposition persisted, the sum of 3s. 6d. per week, cessation of payment causing the immediate grant of the discharge. We do not know how far our contemporary is serious, and to what extent facetious, but this system would hardly work well in these days, when the Official Receiver is the only opposing party, and when, moreover, few bankrupts bother to obtain their discharge at all. Most of them have a wife or a convenient relative in whose name they may trade!

**Sixpence-a-Share Litigation.** It has frequently been pointed out that shareholders who subscribe to a fund for the purpose of instituting proceedings against directors or others upon their joint behalf render themselves personally liable to pay the whole of the costs of the other side in the event of those proceedings proving unsuccessful. This fact is being somewhat unpleasantly brought home to certain dissatisfied shareholders by the recent issue of a circular informing them that if they now pay up twice as much as they originally contributed they may escape further liability, but that, failing that, the solicitors of the parties attacked may in their turn attack them individually. It would, of course, be in the grossest degree unfair if by any device dissatisfied shareholders or any other plaintiffs could combine for a joint attack, and at the same time secure the benefits of limited liability in the event of failure, and anyone who seriously expected that he could be put in such a position most certainly deserves to lose his money; but in spite of the fact which is now being so practically demonstrated, that no one can go to law without running risks, it must, we think, be obvious that co-operative litigation provides a means

of enabling small investors to test their legal rights in a manner that would otherwise be practically impossible; and so long as agitations against directors and others are not got up for the sole purpose of providing fees to professional men, there would appear to be nothing to be said against them, save by those who may be made defendants at their suit.

#### License Compensation.

Although the full effect of the compensation scheme has probably not yet been felt owing to the short lapse of time since the passing of the 1904 Act, the new levy will certainly be conspicuous on the debit side of the Revenue Account of those concerned. Some idea of the amounts involved may be gathered from the following table, which shows in the cities and counties named the total amount of the Compensation Fund as at 26th February last, the number of licenses extinguished in 1905 for which compensation has to be paid, and the amount of compensation awarded in such cases:—

District	Compensation Fund	Extinct Licenses Compensated	Compensation Paid
	£		£
Yorkshire, West Riding .. ..	40,955	3	2,595
Glamorganshire .. ..	23,293	8	3,616
Middlesex .. ..	20,312	3	4,840
Cheshire .. ..	18,487	9	5,351
Liverpool .. ..	18,257	26	12,493
Surrey .. ..	17,665	10	9,017
Sheffield .. ..	16,394	11	9,100
Newcastle-upon-Tyne .. ..	14,390	10	7,280
Kent, East .. ..	13,548	6	5,300
Bristol .. ..	11,442	11	5,156

**An Accountant's Change of Name.** Under date of the 24th ult. Mr. G. A. Touch, C.A., has with all due formality noted that he has by Royal license and authority varied the spelling of his name by the addition or restoration thereto of the letter "e," and intends forthwith upon all occasions to use the surname of Touche instead of Touch. Interviewed by a *Daily Mail* representative, Mr. Touche explained that his reason for making the change was that he received letters addressed to him in all sorts of names owing to the variety of ways in which his name was pronounced by persons who were unacquainted with him personally. We are not sure whether the new spelling will make for greater certainty in the matter of pronunciation, but that, of course, is a matter which affects no one but Mr. Touche himself.

**Income Tax  
Returns and  
Professional  
Confidence.**

The question raised by our correspondent "A.C.A." in a letter which appeared in our issue of the 12th ult. is one of some little interest, and we had rather hoped that it would have proved productive of a lively discussion. Apart from the question raised by our correspondent, that if all Chartered Accountants were obliged to communicate the results of their investigations to Surveyors of Taxes they might easily become gratuitous assessors to the Department, the question is, of course, raised as to whether there can be any possible justification for requiring that a business man who has retained the services of a professional accountant should obtain at his own expense that accountant's guarantee that his income-tax return is in all respects in order. In the absence of any express statutory provision to that effect, it seems directly contrary to all established principles that the client of a professional man should be either directly or indirectly compelled to place such professional advice as he may have received at the disposal of third parties. The principle of professional privilege is fairly generally understood, and must, it seems to us, apply at least as much to accountants as to solicitors or medical men, and we consider it beyond question that accountants are justified in pleading professional privilege and refusing all information, save in cases where they have been expressly instructed by their clients to settle the assessment for income-tax at the client's expense.

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

[We have received a letter signed with the initials P. Q. If our correspondent will forward his card, we shall be happy to insert his letter.]

**Income Tax.—Married Women.**

*(To the Editor of The Accountant.)*

SIR,—If you will kindly allow me to reply to your correspondent in the case of a husband and wife deriving incomes from employment in a limited company, I should say that the Surveyor is distinctly wrong. The Finance Act of 1897 provides that a separate abatement shall be allowed in respect of the income of a married woman if derived from a business carried on by means of her own personal labour, provided the husband also carries on a business by means of his own personal labour, in cases where the united incomes do not exceed the sum of £500.

The business must be distinct, but I maintain that this principle is not vitiated by the fact that husband and wife are employed in the same house of business.

I presume in this case that either post could be vacated without reference to the other.

Yours faithfully,

London, 24th May 1906.

SAML. W. FLINT.

[Our own view upon this point was stated last week: page 661.—ED. ACCT.]

*(To the Editor of The Accountant.)*

SIR,—I read the interesting case put by "Tax" in your issue of 19th inst., and also your response which appeared in the issue of 26th inst.

It appears to me—though there is some support for a contrary opinion in the words "unconnected with the business of the wife"—that two abatements should be allowed in the case given.

The business is certainly not that of the husband nor of the wife, but of seven or more persons who have formed a company in accordance with the Companies Acts. The husband probably influenced her appointment, but he is not her employer, and her remuneration will issue from the company and not from the husband.

Even though it be a so-called one-man company, it is, nevertheless, a limited liability company and subject to all the advantages and disabilities of the latter, and, as taxing Acts must be construed literally, I consider that to the two persons to whom reference was made in the letter of "Tax" abatements should be granted.

Yours faithfully,

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T. HALLETT FRY.

May 28th 1906.

**Minutes.***(To the Editor of The Accountant.)*

SIR,—A friend of mine, who is the secretary of an ordinary joint-stock company with limited liability, informs me that the minutes of the shareholders passed at their ordinary annual general meeting are always confirmed at the next succeeding meeting of directors, and are not read at the following annual meeting of shareholders.

This procedure, to my mind, seems *ultra vires*, but as the reading of Section 67 of the Act of 1862 (which, I think, controls the point) is very vague, I shall be glad to have the opinions of some of your readers on the matter.

The section referred to reads as follows:—

"Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose, and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the Chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings," &c. &c.

Yours faithfully,

28th May 1906.

ENQUIRER.

[Our correspondent's friend has stated the usual practice. Obviously it would be inconvenient to leave the minutes unsigned for a year, and no one's recollection of what had transpired so long ago would be very reliable.—Ed. Acct.]

**Forfeited Shares.***(To the Editor of The Accountant.)*

SIR,—I am obliged by your reference to this matter in last issue of *The Accountant*, which confirms my own opinion. Undoubtedly, the article in question avoided the creation of a lien, and this was why I considered it good. The words used in my first letter, "this power amounts to more than a lien on the member's shares," were not intended by me to read as part of the article, but written in comment by myself on the article. What I particularly wanted to obtain was an expression of opinion from you regarding the statement on p. 507 of *The Accountant* (quoted from a lecture) that "the only

"ground on which shares can be forfeited is for non-payment of calls." I think you will agree that this needs qualification.

Will you therefore kindly express your opinion as to this point generally and again oblige,

Yours faithfully,

Gravesend, 28th May 1906.

A. WARR KING.

[We agree that the statement quoted is too wide.—Ed. Acct.]

**Building Society's Advances to Officials.***(To the Editor of The Accountant.)*

SIR,—I shall feel obliged if any of your correspondents will kindly advise me in the following circumstances:—

In the accounts of a building society I find, in the course of my annual audit, that the directors have advanced to an official of the society upon his property an amount which, I think, is beyond the limit allowed—in fact, I feel almost certain that an advance has been made beyond the present value of the property if it were realised. What is my position? If I report on the matter to the shareholders I have no facts to rely upon, only my own opinion, and I shall be met with the valuation of the person appointed for the purpose, and shall only appear to be needlessly meddling.

I am, yours faithfully,

A. R.

**Registration for the Profession.***(To the Editor of The Accountant.)*

SIR,—Referring to the various letters appearing in *The Accountant* from time to time upon the proposals for "registration" and "amalgamation," so far as I have seen no one has ever told us what would be the position after either one or the other of those proposals had been adopted.

I am old enough to remember the establishment of the Institute, when all and sundry who could reasonably lay claim to being professional accountants were gathered into one body. The door, without a doubt, was opened wide enough, some averred too much so. The Charter was granted but a monopoly could not be obtained, neither can it now.

Shortly after this a number of accountants, who either would not apply for admission to the Institute or

who were for some reason refused, formed a society of outsiders.

Since that time their action has been copied by other groups of enterprising gentlemen, with the result that we are now confronted with several companies or coteries, all of whom are loudly clamouring for a recognised position—preferably, of course, that of a Chartered Accountant, which they claim, for various reasons, as a right. The right has not been admitted, nor on its merits can it be admitted.

The questions the different Societies ought to answer are as follow :—

- (1) Why have not their members supported the Institute and added to its importance by conforming to its requirements and entering it legitimately and fearlessly by the front door?
- (2) Does anyone suppose that "registration" or "amalgamation" or both will be a finality; and if not, what will have to be done in the future with the new growth of the disaffected and unworthy?

In support of the contention for union the huge number of members of the various Societies are confidently hurled at our heads as a justification; but those who use this kind of argument forget entirely that the bigger the numbers the weaker the case.

Upon a tranquil consideration of the subject by Chartered Accountants I am persuaded that they must conclude that the Institute is strong enough and good enough to stand alone. Should, unfortunately, members take an opposite view and be carried away by the vehement outcry now so frequently in evidence and admit one or more of these companies, or join in any registration proposal, it will be a process of unwarrantable dilution and a deliberate abandonment of a unique status which can never be recovered; and, further, it will be a proceeding which in the future will be regretted once and always. The name "Chartered Accountant" will lose all its halo and perforce sink to the level it has selected, and appropriately so.

I trust that the members of the Institute will see to it that such an undesirable condition is rendered impossible; and to prevent it, will every one use his pen and his speech, and finally, if necessary, his vote in strenuous opposition?

Yours respectfully,

May 29th 1906.

F.C.A.

(To the Editor of The Accountant.)

SIR,—I have read the correspondence in your columns on the above subject, and I trust it will bear fruit in the Councils of the Institute and the Society arriving at an amicable understanding. Had this been done ten years ago the profession would have been in a much better position. In the interests of the profession as a whole something should be done at once to put a stop to societies of accountants which sell "degrees" for a nominal consideration.

I also concur that a remonstrance should be made to the Scotch C.A.'s to stop flooding the profession with young passed men for whom no openings can be found, and who are therefore forced to cross the border. The whole situation demands, and I trust will receive, the earnest attention of the Councils of the Institute and the Society.

Yours truly,

PARS PRO TOTO.

#### Registration and Articled Clerks.

(To the Editor of The Accountant.)

SIR,—By all means let us have registration if we cannot have unity.

Under the present very unsatisfactory system there are a very large number of members of our Institute whose earnings do not reach an income-tax limit. Some are styled "Associates in Practice"—the practice usually being of a very limited description—others, "Associates not in Practice." Those in practice find themselves constantly in competition with members of the Society of Accountants and Auditors.

The man in the street is not aware of any difference between the members of one or the other, and for the purposes of my argument I should like members of the Institute to understand that probably there are 6,000 accountants (of sorts) in England and Wales.

Our Institute at present numbers 3,400 members, and inasmuch as 318 articles of clerkship were registered last year, we shall approximate 5,000 members at the end of the next five or six years. I venture to assert that under existing conditions so many accountants are not required.

Mr. Justice Darling, in a recent humorous speech, stated that he selected the profession of a barrister-at-law because he thought it would be the most lazy one

for him. In the accountancy profession it is unquestionably true, although there are few who care to admit the fact, that there are a great many who are, so to speak, "Balance-Sheet-less." The profession does not even possess the advantage of seeing its leaders appointed to Judgeships, &c. Rather, *au contraire*, the leading men of past generations who have departed this life continue to sign Balance Sheets in a most serious and solemn manner. And yet we are so very particular as to our facts! In future some young men of wealth might choose the profession of a Chartered Accountant for the same reason that actuated Mr. Justice Darling, but with more certainty of attaining the end in view.

Sir Lawson Walton, on the other hand, has recently stated his opinion how a man may succeed at the bar. With apologies to this distinguished gentleman I have adopted his remarks as follows: A man *may* succeed as a Chartered Accountant (1) By becoming a managing clerk and waiting for the death of his principal; (2) by writing some lectures or a book; (3) by marrying the elderly ugly daughter of a Judge, successful solicitor, or his principal; (4) by a miracle. Sir Lawson may be quite right, but I even believe that there are some who would not care to repeat their experiences of the first three methods, and are now fervently trusting to number four.

May I suggest that members should consider and discuss these and cognate subjects thoroughly, before the next annual meeting of the Institute, with the view of bringing about an alteration of the bye-laws so as to (1) reduce the number of articulated clerks allowed to each practising member to one, and (2), fixing an age limit for entering into articles, (3) the fixing of an age limit for the issue of a certificate of practice, and (4) secure the elimination from a firm's name of the names of deceased or retired partners.

There are other subjects worth consideration, such as the abolition of entrance fees for Fellowship, and the payment of the election expenses of a limited number of qualified and willing members of our profession for the purpose of better securing a proper recognition of the profession in legislation affecting it. We can afford the latter, whilst we hardly need the freehold of the Institute premises. Surely the time has now arrived for giving more consideration to the living members instead of thinking about 999 years hence!

Yours obediently,

SYMPATHIST.

### Smith v. Sheard.

(To the Editor of The Accountant.)

SIR,—In reading your leader in the above case (which, I presume, is formulated from the detailed evidence as given in your Law Reports) I observe that you state:—

"Moreover, it seems almost impossible to avoid the conclusion that the jury accepted the extraordinary statement made by Mr. Arthur Whittaker, A.C.A., in the course of his evidence that he did not think there was any difference between a partial audit and a complete audit."

I have to inform you that I never made any such statement, and your leader would appear to have been written under a misconception both as to the evidence given and the facts of the case.

When I was consulted in this matter I recognised the serious nature of the charge, and would not undertake to give evidence until I had had an opportunity of thoroughly investigating the position; but as the matter is, I understand, under appeal, I do not think that any detailed discussion on the matter should be taken up until the result of such appeal is known. In the meantime, I must ask you to please publish this letter in your next issue, as it only requires ordinary common sense to understand that such a statement must have been inserted under a misconception.

Yours faithfully,

ARTHUR WHITTAKER.

Manchester, 29th May 1906.

### State Insurance for Old Age Pensions.

(To the Editor of The Accountant.)

SIR,—Your remarks upon direct and indirect taxation remind me of the system which, I understand, exists in Germany for providing old age pensions. I believe it is a graduated payment, weekly, upon all wages of £40 or upwards, and is deducted by the employer, who immediately pays it over to the State.

Yours faithfully,

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## Vouching in the Conduct of Audits of the Accounts of Joint Stock Companies.

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A LECTURE read before the London Society on March 14th, Mr. J. G. FOWLER, F.C.A., presiding.

In connection with the subject which is before us this evening, vouching might be loosely defined as the confirmation, or proof (generally by the production of documentary evidence), of the entries as they appear in the books and accounts of companies.

In my opinion vouching is the very soul of auditing, and the fundamental consideration which should predominate in the mind of every auditor. Just as the scent is hidden away in the chalice of a flower, so you will find the very essence of a company's position involved in the labours attached to a competent and comprehensive examination of the vouchers, and I venture to suggest that many of the pitfalls into which auditors have fallen in the past would have been discovered and avoided by a more diligent regard for this branch of our professional duties. Many of the legal cases, and much of the unwritten history of accountancy, are pregnant with evidence that, comparatively speaking, an undue regard has been paid in the past to the mere agreement of figures, and to the fact that the calculations involved in the bookkeeping and in the preparation of the Balance Sheet are correct. I suggest that this state of affairs was the outcome of the hereditary influence of amateur auditing, which for many years previous to the birth of accountancy as a profession had enjoyed an undisputed existence in this country. But these influences are passing away, and with the growth and increasing status of accountancy we have evidence that auditors are rapidly rising to a true sense of their duties and responsibilities.

It is essential in the matter of vouching to deal with the entries at their source, because, as you are aware, they afterwards gravitate systematically to their ultimate destination in the Ledger. This progression is generally automatic for the purpose of balancing the books, and is based on a theory known to you all as Double-Entry Bookkeeping. We are not concerned with that subject this evening, however, and I would therefore ask you to eliminate from your minds all considerations of mechanical and arithmetical accuracy, and to contemplate with me for a brief space how we, as auditors, can best satisfy ourselves of the justification for the existence of the figures constituting the entries as they first appear in the books.

You will remember I have already suggested that in vouching you must go to the beginning of all things, and examine the entry at its source. It will be obvious to you that unless an auditor adopts this course he will be only partially acquainted with facts, and this of itself is an unsatisfactory, and possibly a very dangerous, position to occupy. But, gentlemen, in view of the diversity of operations controlled by joint-stock companies, and the ramifications and variety of the transactions entered into, the subject is beyond the limitation of a single lecture. We can therefore only hope to survey the ground generally in the time at our disposal, and consequently I shall only endeavour to give you a few practical suggestions, which, I trust, may be of some service to you in your examinations, or in your subsequent professional career.

As you are all aware, the Journal, Cash Book, and Ledger may be said to constitute the corpus of bookkeeping, as we understand it to-day, and I need scarcely enunciate the general principle, admitted, I think, by the majority of accountants, that all the entries which are finally recorded in the Ledger of the company should be previously entered in one or other of the books mentioned, and should be passed through to the Ledger by such a process, and in such form as best suits the particular circumstances of each case.

In referring to the Journal, please understand I use the word in its comprehensive sense. It was characteristic of bookkeeping in the days of our forefathers—and, indeed, the system still lingers with many old established concerns—to post all the entries into the Ledger from the ordinary form of Journal, ruled with the double Cash columns, and the cash was also frequently dealt with in the same manner. But the tendency of modernism has been towards the saving of time and labour, and a consequent modification of the old form of the Journal, with the result that Purchases Day Books, Sales Day Books, Returns Books, Bill Books, Consignments Day Books, Allowances Books, and various other similar books have been devised, more or less in tabular form, as best suits the nature and extent of the business of the company, but chiefly with the objects of saving the labour involved in much writing, of providing for a convenient classification of the sources of income and expenditure respectively, and to increase the accessibility of the work, and allow a number of the staff to proceed concurrently therewith.

All these books have, as it were, grown out of the Journal, and I think we might therefore briefly consider the vouching of these records (which presents no great difficulty) before passing on to the Journal itself, which will require our more careful consideration in a few moments.

The Purchases Day Book frequently contains columns providing for an analysis of the purchases according to the branches or departments of a business, or it may be so arranged that columns are provided for Freight and Carriage, Commission, and other trading or manufacturing charges, or for administration expenses, according to the classification of such expenditure as it will ultimately appear in the Revenue Account of the company. This book will be written up from the separate invoices, or from the monthly or other periodical statements rendered, according to the nature of the business, or the custom of the trade. These documents, therefore, should be produced to the auditor, whose examination will be directed to satisfying himself:—

(1) That each entry in the Day Book represents a genuine transaction.

(2) That the amount of the invoice has been so entered that the proper accounts in the Ledger will be debited and credited respectively in due course.

Let me here explain the importance of guarding against the possibility of invoices, or other equivalent statements, which have been twice rendered to a company being written up in the Purchases Day Book on the second occasion. In cases where a bookkeeper has had considerable latitude I have come across more than one instance of a fraud committed by the simple process of writing up the invoices in duplicate as rendered. Cheques for the excess amount so passed to the creditor's account would then be drawn in the ordinary manner, and the debit passed to his account in due course. The balance due to the creditor would thus appear to be accurate, and a manipulation of the receipts completed the scheme of defalcation.

It is also generally advisable for the auditor to initial, or to cancel by a stamp which is in the custody only of his staff or of himself, all invoices or other vouchers as they are dealt with. The adoption of this course will prevent the production of a document on a second occasion, a possibility which cannot be so easily guarded against where mere ticking is resorted to. I daresay you have sometimes discovered that clients make very good imitations of auditors' ticks, but whether it is out of regard for the eccentricities of their design, or to assume a knowledge of the mysteries of their interpretation, I cannot say.

We will now pass on to the Sales Day Book, in which are entered the credit sales to be charged out to the customers' or debtors' accounts. This book may also be ruled in columns for a convenient analysis of the sales, or the other sources of revenue, and will be written up from copies of the invoices, advice notes, or other documents which record the fact of the indebtedness of some party to the company. In vouching the credit sales it is

important that the copies of the invoices, or other equivalent statements, as submitted to the auditor, should be press or carbon copies of the originals, and it will require the exercise of judgment and considerable care to detect an attempt at inflation of the sales, or, on the other hand, to discover the failure to account for goods sold. In this connection I think there is considerable security in the practice now adopted by many concerns of sending out to all customers at the end of the financial year a statement of account showing the balance due, and requesting them to reply confirming the figures, sometimes on a form which is enclosed for the purpose. In these cases you have the basis for an independent verification of the book debts.

In vouching both the Sales Day Book and the Bought Day Book, it is necessary to exercise vigilance in regard to the manner in which trade discounts are dealt with. As you are aware, these discounts, unlike cash discounts, do not generally depend upon the terms of payment, and where they are shown on the invoices, as is often the case, I think the net amount of the invoice might be written up, in the absence of any *substantial reason to the contrary*. The more laborious system of writing back the trade discounts through the Allowance Book is thus obviated, and the result, in so far as the Purchases and Sales Accounts respectively are affected, is the same. In many instances price list and other gross quotations are vague and unintelligible, because the actual sale price depends upon the trade discount, which is sometimes a fluctuating figure. The system was originated with the view of creating a ring—or shall I call it a "tariff wall"—to protect the varied interests of those engaged in trade, in order that the prices paid by the consumer, in the event of his purchasing direct from the manufacturer, or the wholesale vendor, should be equivalent to that which he would pay to a retailer, the trade discount being allowed to the retailer only. The varied interests of all those concerned in the production and disposal of the goods were thus conserved. But go to-day (any of you) and purchase, say, a piano or a bicycle, and you will find the price list quotation is not after all a protective wall, but a mere shadow that flits away into obscurity when you come to close quarters in your negotiations.

The vouching of the Bought Returns and the Sales Returns will be a repetition of the process of vouching the books already considered, except that the auditor will be dealing with credit notes instead of invoices received, and copies of credit notes sent to customers for returns by them.

We now pass on to the Bill Book, which is usually divided into two parts, the bills receivable being entered in one section and the bills payable in the other. Each bill is often dealt with separately through the Journal, but

the bill may be posted direct from the Bill Book to the Personal Account, and the columns periodically totalled and carried to the Bills Receivable and Bills Payable Account respectively. Whichever system is in practice, the auditor should ascertain that the balances of the Bills Accounts in the Ledger agree with the particulars of the current bills, according to the Bill Book. Bills receivable which have not matured would be held by the company, and could be produced for inspection, unless they have been discounted or otherwise negotiated, in which event there should be evidence of the consideration received on parting with the bill. If the bill is discounted it will generally be done through the bankers, as this is an important and lucrative branch of banking operations, and in this case you will find the Pass Book an important voucher. In the event, however, of bills having been negotiated through a bill broker, or other financial house, there will generally be an advice note, showing the amount advanced on the bill and the discount charge.

In regard to bills payable, as you are aware, they are not in evidence during their period of currency, but they have a wonderful way of coming home to roost on the due date; a fact quite unappreciated by the individual who, under pressure from a creditor, gave him a bill of acceptance, and walked away, gleefully saying, "Thank goodness, that debt is paid."

In some trades it is the custom to accept bills drawn for a fixed period in respect of certain liabilities; for instance, bills may be regularly given at, say, two months for goods bought, but which can only be sold after the lapse of a certain time from the date of purchase. Where any custom of this kind is in vogue the auditor, by an examination of the Bought Ledger Accounts, can ascertain whether these bills have been entered up; but, generally speaking, in ordinary circumstances I have yet to learn that there is any royal road to the vouching of an entry in the Bills Payable Book before the due date of the bill. On maturity, however, the bill will be available as a Cash Book voucher in the event of payment, or as a voucher for the Journal, if it is withdrawn or dishonoured.

I have referred in my earlier remarks to Consignments Day Books. These books are in use amongst fruit brokers, meat salesmen, and others who receive an enormous number of very small consignments. They are so formulated that the consignor is credited merely with the net amount realised on his goods. The various deductions for commission and other charges are carried periodically to the credit of the proper Impersonal Accounts by total, the gross amount of each sale being incorporated in each entry, and debited therefrom to the account of the customer. I need only say in passing that the carbon or press copies of the sales invoices, in conjunction with the copies of the account

sales sent to the consignors, will enable the auditor to vouch the entries in this book.

The Allowance Book is, generally speaking, a record of the amounts allowed to, or by, the company in respect of trade discounts, and for goods damaged, shortage of quantity, or possibly for errors in calculations. These facts may be evidenced by the production of invoices, amended invoices, credit notes, or perhaps by letters, or even contracts, and the auditor will be called upon to exercise his judgment according to the circumstances.

We will now proceed to consider the vouching of the Journal entries. Your auditing experience will have taught you that the vouching of the records already considered runs in a more or less fixed groove when you have once settled the basis on which you are to proceed. But the Journal presents us with a very different problem, for the entries in this book are of a miscellaneous and diversified nature, and often raise questions involving important considerations of principle, and even of law. You will readily appreciate, therefore, that it is impossible to lay down a general rule for your guidance in the vouching, and such being the case I shall submit to you some of the more important entries you are likely to meet with in the Journal, and in connection therewith the vouchers which will fall within the purview of the auditor's consideration.

As the great majority of companies are formed for the purpose of acquisition—be it a property, a goodwill, a concession, a reversion, a patent, or whatever else—with a view to subsequent profit, the first entries in the Journal will generally be those relating to the purchase agreement. This document is often of inordinate length, and to the article clerk the interpretation and effect of involved legal phraseology presents considerable difficulty. You must not let this discourage you, however, as you will find that, with practice, and a riper experience, the essence of the contract will become more readily comprehensible. Let me make a suggestion which, I think, may help you in studying these agreements—viz., to take notes as you proceed, and to put down shortly, in your own words, the facts mentioned in the recital clauses, and the subsequent terms and conditions of the bargain. In this way you will obtain in a comparatively small space, and in language of a non-technical and more intelligible character, the story of the purchase and the obligations of the parties to the contract. It is in fact a very useful plan, and one which is, I think, in frequent practice, to take notes systematically of all agreements (purchase or otherwise) examined in the course of an audit, and to have these notes properly endorsed and filed away with the papers on the conclusion of the auditor's labours. I recommend that ordinary foolscap paper be divided into two equal longitudinal sections, the

left-hand space being reserved for the extracts from the agreement, the opposite space on the right being utilised for any observations or queries of the auditor, or for any explanation or information given to him by a director or other officer of the company, and for his final note as to whether the matter has been satisfactorily disposed of, or has been adjusted, if such is necessary. In the event of any question arising at any future time these notes will often be found of the greatest convenience. Where the notes have been the subject of a Journal entry, it is well to also state the reference page in that book.

Having thus become acquainted with the terms of the purchase contract you will be able to vouch the entries in the Journal relating thereto; and in so doing it is desirable to see that the description of the Purchase Account (or accounts) is sufficiently comprehensive, and conveys in concise language a general idea of what has been acquired. You will want this information eventually for the Balance Sheet, because it is important that shareholders should be enabled to clearly understand the nature of that which has been purchased.

As you are aware, companies are frequently formed to acquire the property and assets, and to assume the liabilities of a previously existing concern, which has probably got upon the rocks owing to a shortage of working capital. A process of liquidation supplies this defect, and under what is termed a reconstruction agreement the new company steps into the shoes of the former, and starts out on its commercial career. It will be necessary for the auditor of the purchasing company to examine, in connection with the Journal vouching, not only the agreement itself, but a statement signed by the liquidator of the vendor company, showing particulars of the receipts and expenses in the liquidation, the assets purchased, and also of the liabilities taken over; and if it happens that any liabilities are not included in the liquidator's statement, as is sometimes the case owing to the subsequent receipt of proofs of debt, the auditor should ask for a letter from the liquidator, stating that he (the liquidator) has admitted the claim in question, before he passes the entry in the purchasing company's books.

In cases where the vendor is also the promoter you will generally find that the contract defines the position of the parties in regard to the preliminary expenses; but there may be a separate promotion agreement, as is usual where the promoter and the vendor are not one and the same individual. In either event it is most important to ascertain who is liable to pay the legal and other charges in connection with the promotion and incorporation of the company, the capital duties, and the law costs and stamps relating to deeds of assignment subsequently executed. I refer to

this because some very nice points frequently arise as to who is really liable, having regard to the wording of the agreements, and I have more than once discovered instances where solicitors have acknowledged themselves defeated. Only the other day, during the conduct of an audit, I came across a bill of costs made out *as against a company*, which included disbursements for stamps on certain assignments executed long after the date of incorporation. These stamps should have been paid for by the vendor, but owing perhaps to the long interval which had elapsed before the necessary formalities were completed, all parties concerned had evidently overlooked the fact, with the result that a considerable sum was in a fair way to being extracted from the pockets of the unfortunate shareholders.

The entries in the Journal affecting the Share Capital Accounts will necessitate an examination of the Allotment Sheets, which should be checked with the application forms sent with the cheques of the applicants to the company's bankers, or sometimes, in the case of small issues of shares, to the company direct. The casts on the Allotment Sheets should be checked, and the total number of shares allotted agreed with the number stated in the board minutes.

It is a common practice for the chairman to initial the sheets for the purpose of identification, and the auditor should observe that this has been done, particularly if the resolution to allot mentions the fact, as is often the case. In reference to the Journal entries which have the effect of crediting to the Capital Account the sums receivable on the shares allotted in respect of application, allotment, and subsequent calls, it is essential that the auditor should study the prospectus and the articles of association, in order to satisfy himself that the conditions of the contract with the public, and also the regulations of the company, have been complied with.

Immediately on the passing of a resolution to make a call a notice of the same is frequently sent to the shareholders, but the call may not be actually payable until the expiration of a certain period. The entry in the Journal should not be made until the call has become actually due, and this is important if the date of the Balance Sheet happens to fall within the period mentioned. I refer to this because, the resolution having been passed, I have known more than one instance where the secretary made the entry forthwith. You will readily appreciate that when the Balance Sheet was prepared the state of the Capital Account suggested that a financial pestilence had been raging amongst the shareholders.

In regard to the sum debited to the vendor for shares allotted to him or his nominees on account of purchase consideration, I need only say in passing that the auditor w

have regard to the purchase agreement and the resolutions of the directors relating thereto.

In all cases where shares are allotted for a consideration other than cash you of course know that a contract must be registered at Somerset House, and the auditor should satisfy himself that this has been done. Before the passing of the Act of 1900 failure to file this contract often resulted in unpleasant consequences for the allottee, but it would be beyond the limits of this paper to expatiate upon what I always regarded as a great hardship on those who gave their services, or their goods, in exchange for an allotment of shares, and then discovered that, out of their ignorance of the law and the carelessness of the company's officials, no contract had been registered. Under Section 7 of the 1900 Act, however, the penalty for non-compliance now, apparently, falls upon the shoulders of the officers of the company, provided they are knowingly a party to the default, and results in the possibility of a raid by the Board of Trade upon the pockets of those individuals to the extent of £50 per day.

We will now consider for a moment those entries giving effect to issues of debentures. The general terms of the issue may be regulated by a prospectus, a trust deed, or by the memorandum or articles of association, and it is necessary to carefully consider all documents, or records relating to the issue, with a view to seeing that everything is in order. The "conditions," which are generally set out in detail in the bonds, should also be studied, as there will be useful information here relating to the payment of interest, the nature of the security, and a host of other matters.

Debentures are sometimes issued as collateral security for the payment of a debt. It is rather difficult to define in exact terms the nature and effect of such a transaction, but, speaking broadly, it means that the debentures are issued for the purpose of giving security, or additional security, in respect of a pre-existing debt. The essence of the position between the company and the creditor, as originally created, remains unaltered in this—that the debentures are held temporarily, and are returnable to the company on the due discharge of the debt. The bonds may possibly carry interest during the period of currency, but I have known frequent instances where the coupons are detached before the company hands over the scrip to the creditor. It is important that these collateral issues should be the subject of the auditor's consideration, because a Journal entry debiting the creditor's account and crediting debenture capital would, I think, be wrong, as there would be no distinction here shown between an absolute allotment in the popular sense and a temporary issue, which does not create a debenture debt in the ordinary acceptance of the term, particularly where any

of the rights of the holders are restricted, as in the case I have cited. We are now touching, however, upon an abstract question of principle, and I will therefore confine my remarks to stating that an issue of debentures as collateral security is generally the result of pressure brought to bear by the creditor, and there would therefore, in all probability, be correspondence (including very possibly a suggestion of hostilities) for inspection as a voucher.

One of the most important and difficult questions in connection with Journal vouching is the allocation of expenditure as between capital and revenue in the case of mines, quarries, collieries, and similar undertakings. It is not my purpose to-night to touch upon the considerations of principle involved in this subject, or to refer to the conflicting controversies which have raged around the question of "What is profit of a company?" Your professional literature will tell you of this, and a study of it will very probably leave you exactly where you were before.

We will assume for a moment that the audit is that of a colliery, or a company owning, say, iron ore mines. In the first years, at any rate, the probability is that exploration and development work will be proceeding concurrently with production, and the importance of a reliable analysis of the cost of labour, and the outlay upon coal, timber, stores, &c., requires no emphasis from me. The allocation of the wages, which are usually paid fortnightly, should be undertaken by the pay clerk when the Wages Sheets are made up. He will get his information from records kept at the pit mouth, or by the foreman or other representative of the company at the scene of operations. I cannot go into further detail than this, because systems vary somewhat according to the nature of the mine, and local custom. The wages clerk should sign the analysis statement, the accuracy of which should also be certified by the mine manager.

In regard to Fuel, Timber, and General Stores used, there should be a book kept for stores purchased, and another for stores given out, and in addition to these records a Store Ledger is often in use. You will find a capital form of ruling for these books in a lecture on "Collieries," delivered by the late Mr. A. A. James before this Society some years ago. I have found it a convenience, however, to divide the Stores Given Out Book, or the Stores Ledger, into columns, arranged for the reception of the various items, so that their ultimate disposition can be seen at a glance. The headings of these columns would be something like this:—

- (1) Development and Exploration.
- (2) Estate Account (where house and cottage property is owned).
- (3) Mining Account.
- (4) Repairs and Renewals.

With the above information, and a periodical analysis of the wages under the same heads, the auditor should have no great difficulty in vouching the Journal entries.

But, gentlemen, what is to be said where no reliable system has been in use—in those cases where wages have not been divided, and where stores have been very much divided without record? Opinions may differ as to the course to be pursued; and here, again, the particular circumstances must weigh with the auditor. The mine manager, by an examination of the works, will probably be able to prepare estimates of the stores, &c., used in respect of capital outlay, but the calculation, to a certain extent, will be obviously of an approximate character, and the auditor must therefore satisfy himself that the Revenue Account is charged with its full share of this expenditure. He should carefully consider the basis on which the statement has been prepared, and inquire into, and discuss with the manager, any points requiring elucidation.

Then as to the analysis of the wages, it ought to be possible for the manager, with the help of his assistants at the mine, to prepare a similar statement from the Pay Sheets, having regard to their intimate knowledge of the development and exploration work completed, and the men engaged thereon; but here, again, the auditor will be called upon to scrutinise the figures submitted to him before he accepts the certificate of the mine manager.

Notwithstanding the exercise of caution and care, the position is an unsatisfactory one in the circumstances just related, and I should advise you, if you are ever situated thus, to make it clear in your report to the shareholders that the outlay upon Capital Account is based upon estimates prepared by the mine manager and approved by the directors.

In the case of gold, copper, and other mines situated abroad, the returns sent over by the manager will doubtless be written up through the Journal. These returns may have been audited locally, in which event the auditor is relieved from considerable responsibility, and his duties will be generally confined to seeing that the figures in the Journal are correctly entered, that the total sum remitted abroad (less the disbursements in the head office books) agrees with the amount shown in the returns, and that there has been strict adherence to principles, both in the returns themselves and in the process of incorporation in the Journal. It generally happens, however, that there has been no local audit, and in such event an examination of the vouchers in support of the returns becomes necessary. The nature of the payments must be carefully considered, because here again you meet with the old problem as to what is chargeable to revenue and to capital respectively, and this difficulty is intensified when the mine has reached the stage of production. Having dealt with the

expenditure, the amount realised on the sales of ore should be vouched with the certificate, or accounts of the agent, through whom these sales are generally made, and it is well if either the originals or duplicates of these certificates are sent direct to the head office of the company. The local bank balance should be verified by a certificate from the bankers, and in regard to any sum in the hands of the manager the auditor must use his discretion as to whether the amount is reasonable. Any consistent increase in the latter figure should also be noted.

A paucity of information is frequently characteristic of mining returns, and the auditor is often asked to certify a Balance Sheet before it is possible to communicate with managers in remote countries in regard to questions which may arise thereon. In such event the report to the shareholders should state that the returns are inadequate, and that the Balance Sheet may therefore be subject to subsequent adjustment in respect thereof.

The matter of directors' fees will demand consideration in connection with vouching the Journal, and I will very briefly refer to one or two points worthy, I think, of attention. The articles of association will, of course, be referred to, and in the great majority of cases will dispose of the Journal entry once and for all. But it sometimes happens that the articles provide for the payment of such fees as may be voted by the company in general meeting, and, more particularly in the case of a first audit, the matter is usually considered by the shareholders at the meeting at which the accounts are presented, so that the vote, when passed, is usually retrospective, and refers to the period covered by the accounts. In such a case I think the auditor should state in his report that the amount of the directors' fees, when voted, must be considered in connection with the accounts, as certified, unless a statement to this effect has been made against the balance of the Revenue Account. It is also worthy of note that where the articles simply stipulate the amount of the fees, it has been held to be *ultra vires* for the company to bear the burden of the income-tax thereon. Whatever sum is therefore paid to the authorities by the company on this account must be deducted from the gross amounts payable to the directors individually, that is, assuming that the board are drawing the full remuneration to which they are entitled.

The entries in the Journal crediting the secretary and the various other officials of the company with the amount of their salaries will present no difficulty, as they will no doubt be appointed under agreement, or by letter, or a minute of the board.

In the case of buildings, or engineering or other works in course of construction, the auditor should inspect the contracts, and, in so far as the operations have been

completed, the liability to the contractors, which at the outset is contingent only, will no doubt have crystallised. A payment under such a contract, however, is not generally due until a certificate has been given to this effect by the architect, engineer, or other expert acting on behalf of the parties, who satisfies himself that the work has been properly done according to specification, and the other conditions agreed upon. The information thus available should be sufficient for the purpose of the vouching.

It sometimes happens that when a company's liquid resources are dwindling to the vanishing point, a director, or some other individual, steps forward and agrees to finance the concern, not by loans of a round sum paid into the banking account, but by paying the company's liabilities direct as they fall due or become pressing. Such transactions are more frequently entered up through the Journal, although they may occasionally be recorded in the Cash Book. In either event the auditor should inspect the resolution of the board, or some other evidence of the terms on which the loans are made, and he should also ask for a statement, signed by the lender and by someone on behalf of the company, including all such transactions, and setting forth the agreed balance due at the date the books closed. All payments made on the company's behalf should also be supported by vouchers.

The question of stock valuations is an important one in connection with Journal vouching. This is a well-worn theme, however, and has been repeatedly discussed in all its aspects in previous lectures and in accountancy journals, and the subject has also been frequently utilised as a rapier in the hands of the examiners of the Institute. I will not trouble you now therefore with a further reference thereto.

In the case of insurance companies and banks there is nothing exceptional in the functions of the Journal. It is simply the depository for closing entries, or such occasional entries as cannot be conveniently entered in any other book for the purpose of posting to the General Ledger. Both in regard to banking and insurance business subsidiary books are kept, containing the individual Personal Accounts of agents or customers, as the case may be, and the balances in the subsidiary books must always agree in the aggregate with the balances in the General Ledger system. As you are probably aware, the bulk of the entries in the case of a bank originate in the various subsidiary Cash Books, but with insurance companies the greater part of the business is done through the agents, whose accounts are debited with the premiums on the policies as they fall due, and are in turn credited with the premiums written back in respect of policies extinguished by lapses, surrenders, or other causes. These entries are generally posted up from various books, which

are named according to the ideas of the devisers of the particular system, but in effect they are simply subsidiary Journals, and, if necessary, the various entries can be vouched with the Policies Issued and Policies Extinguished Registers, and in many companies (more particularly where industrial or weekly business is done) with the periodical statements of the agents.

In the case of banks, insurance companies, and other concerns of magnitude, however, a system of internal or departmental check upon the entries in detail is usually in existence. It would be obviously impossible for the auditor to go through every figure in the books of a large and important undertaking, but in all these cases he will be called upon to exercise his judgment as to the extent of his examination of the detail work, and he must, of course, satisfy himself that the internal check is effective and complete.

We have now considered the responsibilities of the auditor in relation to some of the entries which he may find in the Journal. But it is an axiom of audit work that errors of omission must be guarded against equally with those of commission, and we might as well attempt to seek physical comfort in an endeavour to sit upon Euclid's definition of a line as to imagine that our position is secure when we have simply checked the books as submitted to us. The possibility of omissions (particularly those relating to outstanding liabilities) must therefore be kept constantly in view during the examination of Prospectuses, Articles of Association, Contracts, Invoices, Stock Books, Vouchers for Payments, Bills of Exchange, Letters, or Advice Notes, and in particular the Minute Book.

In regard to the last named I have seen some recent correspondence in *The Accountant*, in which the writer advanced the argument that the inspection of this book by an auditor was not necessary, because it was simply a record of the administrative acts of the directors. I think the conclusive answer to this suggestion is that a company's financial position is generally the direct result of the board's administration of its affairs. In my opinion the inspection of the Minute Book is of the very greatest importance, but time will not permit us to consider the cumulative force of the arguments which can be brought to bear in support of the necessity for an examination of this important record.

You will recollect that I referred in my earlier remarks to the vouching of the Cash Book, but in view of the fact that I have already trespassed considerably on your patience I must regretfully abstain from touching upon this subject now. I can, however, refer you to a very practical paper, recently read before the Hull Society, from which

you may gather many valuable hints upon this branch of audit work.

It will, no doubt, have become apparent to you this evening—if, indeed, it has not been so from the earliest days of your professional career—that not only does vouching include a systematic and minute observance of entries in detail, but it requires a competent and comprehensive knowledge of the first principles of accounts. It is not only the justification for the existence of the figures themselves that calls for the auditor's attention. That critical faculty, which study and experience and constant difficulty alone creates and develops, must be brought to bear upon the subject, for you are all aware of the many effects that can often be produced by the same figures, according to the method of grouping, and the principle which attends their final disposition in the books.

I once heard two articled clerks discussing this question of due regard for the minutiae of audit work, and, gentlemen, in other words, this seemed to me to be the effect of their conclusions. But surely, if we are to look at every little detail, and to consider every entry in the books in elaborate fashion, before we are justified in signing a Balance Sheet, we are, indeed, the most miserable of all men, and we ought to write over the portals of our profession the warning words which appear over the gate of Dante's *Inferno*, "All hope abandon, ye who enter here." I sincerely trust that my brief remarks upon the subject of vouching have inspired you with no such dismal forebodings, or I may feel under obligation to approach our esteemed Secretary with a suggestion that I ought to give you another dissertation on the philosophy of sorrow.

No, gentlemen, I am convinced that as you appreciate that trifles make the sum of life, so you realise that, after all, detail is in the aggregate the life's work. It is only an assurance of accuracy in every detail of your professional activities which will render you invulnerable to attack and criticism, and which will make that work a source of satisfaction to yourselves, and of value to your profession and to the community of which you are members.

In the subsequent discussion the Chairman, Messrs. J. Myers, F. G. Bowers, H. Gimson, A. H. McLean, and others took part, and on the proposition of Mr. J. Myers, seconded by Mr. A. C. Anderson, a hearty vote of thanks was accorded to Mr. Barham for his valuable lecture. The meeting terminated with a vote of thanks to the Chairman, proposed by Mr. A. E. Veale, and seconded by Mr. E. C. Jones.

## The Liverpool Chartered Accountants Students' Association.

THE annual general meeting was held at the Library, 3 Lord Street, on Thursday, 24th May.

Mr. Ben Cookson, F.C.A., was in the chair, and there were twenty-two members present.

Tea was provided, after which the minutes of the previous meeting were read and confirmed.

The following are the

### REPORT AND ACCOUNTS.

GENTLEMEN,—The Committee have pleasure in presenting their report for the year ended 30th April last.

During the year 18 members have been elected and 30 members have resigned.

The Association now consists of 83 honorary members and 102 ordinary members, making a total of 185.

The Committee take this opportunity of thanking the gentlemen who have so kindly given their services in preparing and delivering the lectures at the various meetings during the year.

The following is a list of the meetings:—

#### 1905. AUTUMN SESSION.

- Oct. 12.—Lecture, "Methods of Administration of the Estates of deceased Insolvents." Dr. D. F. de l'Hoste Ranking, M.A.
- " 26.—Annual Dinner (at Hotel St. George, at 7.15 p.m.), President's Inaugural Address.
- Nov. 8.—Joint Debate with Hull Chartered Accountants Students' Society (at Hull), as arranged by the Union of C.A. Students' Associations. Subject, Mock Shareholders' Meeting.
- " 16.—Lecture, "Brewery Accounts." Mr. Kenneth Cook, A.C.A.
- " 30.—Lecture, "The Elements of Profit Sharing as applied to Commercial Ventures." Arthur F. Dodd, F.C.A.
- Dec. 14.—Joint Debate with Manchester Chartered Accountants Students' Society (at Liverpool), as arranged by the Union of C.A. Students' Associations. (Same subject as above debate.)

#### 1906 SPRING SESSION.

- Mar. 8.—Lecture, "Rights of Partners *inter se*." Mr. S. S. Dawson, F.C.A.
- " 22.—Lecture, "Some Points in Bankruptcy." Mr. J. Guy Rutledge (Barrister-at-Law).
- " 29.—Lecture, "Preparation of a Statement of Affairs for a Creditor's Meeting." Mr. B. Howorth, F.C.A.
- April 5.—Ten Minutes Papers (with discussion).



The average attendance at the meetings, excluding the dinner, was 38, which compares favourably with that of last year.

The annual dinner was held at the Hotel St. George in October, and was a great social success, 64 members and friends being present.

The educational classes mentioned in the previous report, consisting of a three years' course, were duly started last year.

Your Committee regret the lack of support given to these classes by the members.

Unless more students join the classes they are afraid that the Senior Society will not allow such classes to continue, as they are being worked at present at a considerable loss. The details of the present scheme have been reconsidered and certain alterations are under consideration, which it is hoped will increase the usefulness of the classes.

The following members were successful in passing their examinations :—

*Final, May 1905.*

- H. Williamson (with T. Thorpe), Preston. 4th in order of merit.
- F. W. Comber (with Messrs. Chalmers, Wade & Co.), Liverpool.
- T. R. Edwards (with Mr. A. E. S. Cook), Liverpool.
- B. M. Hanmer (with Mr. T. A. Hanmer), Liverpool.
- T. J. D. Jameson (with Messrs. Harmood Banner & Sons), Liverpool.
- W. T. Wensley (with Messrs. G. E. Holt & Sons), Liverpool.

*Intermediate.*

- E. Eastwood (with Messrs. Chalmers, Wade & Co.), Liverpool. 7th in order of merit.
- T. M. Threlfall (with Messrs. W. H. Walker & Co.), Liverpool. 8th in order of merit.
- B. O. Bunting (with Mr. C. H. Mitchell), Liverpool.
- A. C. Claxton (with Messrs. Blease & Sons), Liverpool.
- A. H. Collins (with Messrs. Maw, Shaw & Collins), Liverpool.
- A. G. Davidson (with Messrs. Deane & Davidson), Liverpool.
- W. L. Evans (with Messrs. Chalmers, Wade & Co.), Liverpool.
- D. E. Garnett (with Messrs. Blease & Sons), Liverpool.
- W. Harmood Banner (with Messrs. Harmood Banner & Sons), Liverpool.
- S. M. B. Hill (with Messrs. Lewis & Mounsey), Liverpool.
- H. C. Kenion (with Messrs. Harmood Banner & Sons), Liverpool.
- D. G. Mathwin (with Messrs. Stead, Taylor & Stead), Liverpool.
- F. H. Whinnerah (with Messrs. Stead, Taylor & Stead), Liverpool.

*Final, November 1905.*

- R. C. de Zouche (with Messrs. Lewis & Mounsey), Liverpool. Second prize and certificate of merit.
- H. Blease (with Messrs. Blease & Sons), Liverpool.
- T. C. Flinn (with Messrs. Finney & Sons), Liverpool.
- A. E. Nicholson (with Messrs. Lloyd & Walker), Liverpool.
- R. B. Singlehurst (with Messrs. Harmood Banner & Sons), Liverpool.
- W. Wilson (with Messrs. Lewis & Mounsey), Liverpool.
- H. Worthington (with Mr. W. J. Swarbrick), Preston.

*Intermediate.*

- W. E. Jones (with Messrs. Roose, Mahon & Howorth), Liverpool. 11th in order of merit.
- A. J. Adams (with Mr. C. G. Haswell), Chester.
- J. W. Clare (with Messrs. Simon, Jude & West), Liverpool.
- V. P. Cowden (with Messrs. E. D. White & Sons), Liverpool.
- F. J. Dunn (with Mr. E. Bradshaw), Warrington.
- T. W. Fletcher (with Messrs. Davidson & Cookson), Liverpool.
- W. H. Jones (with Messrs. W. H. Walker & Co.), Liverpool.
- J. A. Parle (with Messrs. Dawson, Langley & Chevalier), Liverpool.
- W. S. Peet (with Messrs. Dawson, Langley & Chevalier), Liverpool.
- H. A. B. Robinson (with Messrs. Lewis & Mounsey), Liverpool.
- W. N. Sherlock (with Messrs. W. H. Walker & Co.), Liverpool.

Mr. R. C. de Zouche gained the second prize awarded by the Institute for the November Final Examination, and he was also awarded a prize in accordance with the rules of the Association.

Our best thanks are due to Mr. Arthur F. Dodd, F.C.A., and Mr. R. R. Daly, F.C.A., for their services on the Joint Committee of the Union of Chartered Accountants Students' Societies. Mr. Daly has unfortunately had to resign owing to the fact that he is unable to spare sufficient time.

Mr. Arthur F. Dodd, F.C.A., and Mr. Herbert W. Bowler, A.C.A., were unanimously elected as our representatives for the year ending 31st December 1906.

The question of obtaining larger premises for the Library has been carefully considered by your Committee, and several buildings inspected. They regret that nothing suitable has so far been found which in their opinion would justify the increased rent.

The Treasurer's statement of accounts for the past year, duly audited, is annexed.

HERBERT W. BOWLER, *Chairman.*  
WM. L. EVANS, *Hon. Secretary.*



**Liverpool Society of Chartered Accountants.**

## LIBRARY ACCOUNTS.

## REVENUE ACCOUNT for the year ended 31st December 1905.

[illegible]

BALANCE SHEET, 30th December 1905.

<i>Reference Library Fund</i>	.. .. .	£ s d	25 0 0	<i>Circulating Library Reference Library</i>	.. .. .	£ s d	102 13 0
<i>Sundry Creditors—</i>				<i>Furniture—</i>			42 5 6
Rent	.. .. .	8 0 0		Per last Account	.. .. .	60 0 0	
Electric Light	.. .. .	0 12 6		Additions	.. .. .	1 5 0	
G. Reed & Co.	.. .. .	0 2 5					
			8 14 11				
<i>Revenue Account at 31st December 1904</i>	.. .. .	284 5 1		Depreciation	.. .. .	61 5 0	
Less Deficiency to date	.. .. .	19 6 5	264 18 8			6 5 0	55 0 0
				<i>Sundry Debtors—</i>			
				Institute	.. .. .	50 0 0	
				Senior Society	.. .. .	25 0 0	
				Students' Association to 30th April 1906	.. .. .	10 0 0	85 0 0
				<i>Cash—</i>			
				At Bank	.. .. .	12 13 1	
				In hand	.. .. .	1 0 0	13 13 1
							£298 13 7

Audited and found correct,  
(Signed) ERNEST M. ORMDOD, A.C.A.  
*Liverpool 19th January 1906.*

3rd<sup>d</sup> January 1905.  
(Signed) A. BENTLEY, A.C.A.  
Librarian

## Limited Companies and Publicity.

MR. HENRY CLEWS, a New York banker, recently addressed the members of the Students' Association of the Wharton School of Finance at the University of Pennsylvania on the subject of "The Movement in Publicity and Reform."

The lecturer touched upon the need of confidence in banks, trust companies, insurance companies, railroad and other great corporations, and said that this confidence was lacking because of recent exposures of corrupt methods in management and the opposition of corporation officials to legislation aimed to correct these abuses and ensure publicity.

Speaking of the opposition made in New York by the banking interests, he said :—

"This opposition drew more public attention to the agitation for a general bank department examination than would

otherwise have been attracted to it, and the unwillingness to submit to it suggested that there was a screw loose, or something to conceal in connection with some of the State banks; and that they were therefore vulnerable to attack, or at least open to criticism.

The New York Legislature, as well as the Legislatures of the other States, should respond to the popular agitation for publicity by passing laws requiring all corporations, including banks and trust companies, to make at least semi-annual reports of their condition. Only the insolvent and the crooked would have anything to fear from this wholesome publicity. The opposition to publicity shown by the New York State banking interest, as represented in the Legislature, has been surpassed by some of the small life insurance interests, as in New Jersey, where it has choked off probing, and they have aroused fresh suspicions, and much adverse criticism thereby. It is not surprising that many are led to suspect

that there is much still concealed that ought to be revealed.

This desire for secrecy is obviously in defiance of public sentiment, and the Legislature should make the house-cleaning thorough while it is about it.

#### *Law against Rebates.*

Turning to the railways, we find the need of the stricter laws in matters that favour a few at the expense of the many—as, for instance, in the giving of rebates. To prevent these, not a mere fine, which can be easily paid, should be imposed, but the offence should be made a misdemeanour, punishable with imprisonment. Railway officials would then, with the danger of an indictment and a term in prison before them, hesitate to violate the law.

In the limelight of publicity the irregular rebate practices of the railways, for the benefit of large and favoured shippers, would be impossible; and equally so would have been the go-as-you-please and extravagant management of the life insurance companies as revealed by the insurance investigation.

#### *Reform in Business.*

We are passing through a reform—yes, a revolutionary period in business affairs. But good will come out of it, for with improved business methods will come a higher sense of responsibility and a keener perception of duty, which cannot fail to inspire correspondingly greater confidence and produce more certain results. We shall thus have more conservatism in business and fewer speculative hazards and crookedness than before.

The accounting and publicity I advocate would expose, check, and prevent the irregularities and the one-man power abuses that have ended in so many collapses. The one-man control of large corporations must come to an end. An ounce of prevention is better than a pound of cure. Corporations, too, should show that they have souls by not neglecting the welfare of their employees.

The one-man power in large corporations, with a lot of dummy directors subservient to it, should also come to an end. Dummy directors are no better than so many decoy ducks that mislead the public. They are directors who do not direct, and are not expected to direct by those in control who selected them for election. They are consequently a false pretence."

#### *The Money Market.*

Referring to the money market and the occasional extremely high rates of interest demanded for call loans, Mr. Clews said:—

"What we more greatly need is a more stable money market in Wall Street. Such erratic changes in the rates for Stock Exchange loans that we sometimes see would create a convulsion in Europe if they were possible there. But as they are not possible there, why should they be here?

A freak money market, jumping up to absurdly high rates and then down again, is as dangerous as it is intolerable. What we need, among other things, to prevent it is more care and conservatism in banking circles.

One thing tending to produce occasional local stringency is that our money market has to contend with the evil effects of the New York Sub-Treasury, or, rather, the Sub-Treasury System, that locks money up that ought to be kept in circulation.

That we need a more elastic currency is indisputable, and also such changes in our custom of borrowing and lending money on collaterals, on the Stock Exchange, as will secure stability in rates of interest there, even in times of stringency.

#### *Press for Reform.*

With regard to the other matters referred to, it is always well to strike while the iron is hot, and at present the reform movement in legislation affecting life insurance and banking concerns is at white heat, not only in the State of New York, but elsewhere, and it should be pressed forward until all the results aimed at are secured.

In the first place, to accomplish this the life insurance and bank investigations already in progress, or proposed, should be carried out to the fullest extent, and, through the employment of expert and independent bookkeepers and accountants, made so thorough as to leave nothing hidden or in doubt.

#### *Supreme Court opens the Way.*

The recent decision of the Supreme Court of the United States in the Tobacco and Paper Trust cases, that corporations cannot take refuge in secrecy, but must give testimony as to all their transactions, when required, even where it is self-incriminating, is a great victory of the people.

The decision is that the law as it stands, giving a witness the constitutional privilege of refusing to give testimony tending to incriminate himself, does not extend to or cover his refusal to produce books and papers that would incriminate his or any other corporation, the immunity being wholly personal. He cannot therefore assert it either in behalf of a third person or a corporation.

It opens the door and clears the way for a thorough, complete, and public examination of the affairs and accounts of the trusts.

#### *Honest Business Methods.*

There is more permanent prosperity, as well as honour, to be secured by honest than dishonest means. Yet unscrupulousness in high places of trust is often forced upon public attention.

The corruption of Judges and juries and the bribing of legislators should be more abhorrent than larceny itself to every captain of industry and all corporate officials, who

should have equal respect for the truth and their own honour. Great wrongdoers should be no more exempt from punishment than small offenders, and more millions should furnish no protection to them."

## Limited Partnership in Foreign Law.

(From *The Law Times*.)

THE question of introducing the principle of limited partnership has been once more revived in this country by Lord Avebury's Limited Partnership Bill of the present Session. This country's isolated position in this respect is certainly a remarkable one. All leading foreign countries have long admitted the principle of limited partnership, or the *société en commandite simple*. In America it was first introduced in New York State about 1830, and has since been adopted in all, or nearly all, the other States of the Union. As long ago as 1870 it was described by an American writer as "an innovation upon mercantile law" which has stood the severe test of American practice for a "whole generation and has never been recalled or 'importantly modified'": (Parson's Partnership, 2nd edit., p. 546). It is therefore in no sense an untried or experimental system which thus late in the day it is proposed to introduce into this country.

Limited partnership, it need hardly be said, involves the limitation, under certain conditions, of the liability of one or more of the partners (the limited partners of the present Bill) to the extent of their contributions actual or promised to the partnership funds, while the remaining partner or partners (the general partners) remain liable to the full extent. The *société en commandite simple* is essentially of French origin, as, indeed, the name under which it is known in practically all foreign countries, other than America, would imply. It seems to have originated in that country by royal ordinance about 1673. The actual name is said to be derived from the practice, once common in the Mediterranean, of committing or "commending" merchandise for sale to the captains of trading ships, who had to account for it on their return: (Barclay, Companies and British Securities in France, p. 8). A more specialised form of limited partnership is that known as the *société en commandite par actions*. In this case the holding of the limited partners (*commanditaires*) is divided up into shares exactly as though they were shareholders in an ordinary limited company (*société anonyme*). This type of partnership is also of considerable standing, since it was the subject of legislative regulation in France as far back as 1856. It has since been adopted in nearly all foreign countries, other than the United States; in fact, the only important countries where it is not now recognised appear

to be the Russian Empire, Hungary, and possibly also Sweden and Norway. The case of Hungary is somewhat remarkable, since Hungary's Commercial Code dates only from 1876, while the Austrian Commercial Code, which fully recognises this form of partnership, came into force in 1863. The present Limited Partnership Bill contains no reference to this form of partnership, and in this respect has evidently followed the example afforded by America. The various States of the Union appear generally to have fought shy of adopting this somewhat remarkable hybrid between a company and a partnership, though they freely adopted the original form of the *société en commandite simple*.

The present Bill proposes (Section 3) that limited partnership shall not apply to a company incorporated by or in pursuance of any Act of Parliament, letters patent, royal charter, or otherwise, or a mining company subject to the jurisdiction of the Stannaries. These perhaps self-evident exceptions are nothing like so sweeping as those contained in American law. The large majority of the American States forbid a limited partnership to be formed for the purposes of banking or insurance. The grounds on which this prohibition is based are not *prima facie* very obvious, but the striking unanimity of American law on the subject points to some potent reason. One law, at any rate, that of Massachusetts, has dropped the prohibition relating to banking contained in an earlier law, but retained that relating to insurance. Foreign law generally, other than the American, does not appear to draw any such distinctions, or to forbid a limited partnership to be formed to carry on any object, if only it be a lawful one. The Limited Partnership Bill allows the limited partner to contribute, or undertake to contribute, a sum or sums as capital or property valued at a stated amount. This is clearly at variance with the large majority of the American laws. They insist on the share of the special partner (the equivalent of the limited partner of the English Bill) being paid in cash, and in cash only; there is no provision allowing him to pay either in money or in money's worth. The rule is not, however, absolutely universal; thus in Rhode Island and Michigan it may be paid in cash or other property in cash value, while in New Jersey and Nebraska it may be paid in goods and wares. In comparison with the explicit provisions of American law, this question is very vaguely treated in other foreign law. The Chilean Commercial Code of 1867, though one of the oldest codes, alone appears to deal with this point in a definite way. It provides that while the contribution of a limited partner cannot consist of his mere personal industry or credit, it may be represented by the communication of some secret relating to art or science, provided that he does not work such secret himself, or co-operate in its application. Presumably the provisions of the English Bill would meet

such a case if the value of the secret could be assessed at a definite amount. According to the terms of the Bill (Section 8 (1)), a limited partnership can only be formed for a definite term. Such an express proviso as this is not to be found in any foreign law. On the other hand, foreign law generally requires a statement as to the period for which the limited partnership is formed to be entered on the register, but whether this need be a definite term is not clear. German law, at any rate, does not seem to require any limit at all, since this law is exceptional in not requiring any period to be entered on the register, and otherwise assimilates a limited to any ordinary partnership, which it is expressly stated may be formed for an indefinite time. In applying the provisions of ordinary partnership to limited partnership, German law makes some exceptions; notably it excludes the provision which prevents a partner in an ordinary partnership being at the same time, without express consent, a partner in a concern of a similar character. The English Bill seems to take an opposite view, since it adopts the provisions of the general partnership law without any such exception. Section 30 of the Partnership Act, 1890, would therefore appear to prevent a limited partner from becoming such in two businesses of a similar character without express consent. German law, on the other hand, does not exclude a limited partner from the provision which makes a person entering an ordinary partnership liable for the antecedent debts of the partnership. This extraordinary provision is found also in the Austrian, Italian, Hungarian, and Swiss laws. The liability incurred by a limited partner under these laws seems therefore to be a very serious one, but the provisions of Section 17 of the Partnership Act, 1890, would effectually prevent such a contention being upheld in this country.

All laws relating to limited partnership naturally require the terms of the partnership to be registered, and to be open to public inspection. The proposed English law differs in this matter in one important particular from all foreign law equally, whether American or Continental. The latter almost invariably (the Spanish, Portuguese, and Mexican laws being the only apparent exceptions of any note) requires the entry on the register to be completed by publication in one or more newspapers, official or otherwise, in some cases, as in Germany, the publication being carried out by the officials who control the register, but more frequently, as in America, by the parties themselves. This system of publication in addition to registration is a marked feature of foreign law, and America has evidently followed the Continental lead in this particular case. Of publication as a necessary and essential sequel to registration the English Bill makes no mention. The actual registers would under the proposed law be set up only in the three capitals, London, Edinburgh, and Dublin,

though registration may be effected by post. This centralisation of the registers is in marked contrast to the foreign system. The essentially local character of the register is very evident in other countries. Registration must be effected in the district where the business, or any branch of such business, is carried on, for neither on the Continent nor America is there any suggestion of the existence of one central registration office. In the German Empire, for instance, there are said to be 1933 local Courts (Journal of Comparative Legislation, 1903, No. 1, p. 101), all of whom, or, at any rate, the great majority, keep that essentially German institution the trade register (*Handelsregister*) in which local limited partnerships must be registered; while in Switzerland a trade register is to be maintained in every canton, and the authorities of each canton are entitled to create special registers for certain districts should they deem it advisable to do so. The proposed law does (Section 25), in fact, get over the objection to the centralised system of registration by requiring an abstract of any entry in the register to be forwarded within seven days to various local officials in those districts where the business to which the entries relate is carried on—namely, in England, to the registrars of the County Courts. Any abstract so forwarded must be duly filed by the local officials and kept for public inspection.

Perhaps the most important feature of the English Bill is that it contains no proviso, as French law does, forbidding the limited partner to undertake any act of management, even by virtue of a power of attorney. Foreign law generally, other than American, has followed the French example, and confined the position of a limited partner to that of a sleeping partner. The former German Commercial Code of 1870 impliedly allowed a limited partner to carry on business on behalf of the partnership inasmuch as it provided that the limited partner must in such case make it clear that he was merely acting as agent. The modern German Commercial Code of 1900 has, however, dropped this provision, and instead enacts that (article 164) limited partners are to be excluded from actively participating in the management, and, moreover, by article 170 a limited partner is forbidden to represent the partnership. American law, on the other hand, has followed an almost opposite course to that of German law in this respect. The original limited partnership law introduced into the States, the law passed in 1830 in New York State, was founded closely on the French model and therefore entirely excluded the limited partner from participating in the management of the business. Modern American law, however, as exemplified by the Partnership Law of 1897 of the same State—New York—has gone very far in an opposite direction. By Section 37 of that law a special (limited) partner may (*inter alia*) negotiate sales, purchases, and other businesses on behalf of the partnership, provided each

transaction is approved by a general partner; in fact, subject to such approval, there seems nothing to prevent the limited partner from carrying on the business exactly as if he were a general partner. A somewhat similar provision is also found in other American laws. It is apparently contemplated in the English Bill that a limited partner will not have power to manage the business. The only check on his powers it contains, however, is in Section 7, which provides that a limited partner may from time to time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with his partners thereon, provided that nothing therein contained shall give him authority to bind the firm. If in fact he is entitled to be something considerably more than a mere sleeping partner, and is to be permitted to take a more or less active interest in the business, then, in fairness to any person proposing to deal with the firm, who might have neither the time nor the inclination to go to the local County Court and search the register, some obligatory and unmistakable description of the firm as a limited partnership seems required. The law of the State of New York, already referred to, requires a limited partnership to exhibit outside its principal place of business a sign on which is printed in full the names of all members of the partnership, designating which are general and which are special partners. Doubtless such a provision, though it does not apparently meet the case of a branch establishment, was considered necessary, having regard to the attitude given by the same law to the limited partner in carrying on business on behalf of the firm. Short of searching the local register, there appears to be no way provided in the English Bill for discovering whether a partnership is an ordinary one or a limited one. Moreover, the limited partner, in contrast to French and German law, appears to have almost as free a hand in managing the partnership business as he has under the New York law; while, unlike that law, there is no obligation on the partnership generally to exhibit, other than on the register, a notice to the world at large to the effect that things are not as they may well seem to be, but that the apparently unlimited partnership is in fact a limited one.

### Our Inequitable Income Tax.

By SIR WILLIAM BULL, M.P.

(From *The Daily Mail*.)

It is characteristic of the times that a half-jesting remark about the desirability of taxing bachelors received greater attention at the hands of the Press than the more serious part of my appeal to the Chancellor of the Exchequer to try to readjust in ever so slight a degree the intolerable burden of the income-tax this year.

I maintain that the middle classes are in proportion more heavily taxed than either of the others. Indirect taxation of tea, sugar, &c., falls as heavily on them as on the lower classes, while the direct taxation of income is out of all proportion between small incomes and the large incomes of the upper classes.

Again, the man who works with his brain is using up his capital every day and every hour, yet that is taxed exactly on the same basis as if it were money invested in stocks and shares, which produces income without any trouble or wear and tear to the owner, and the capital is kept practically intact.

I quite recognise that Mr. Asquith had to redeem his promise to his friends, the anti-tea-tax capitalists, by whose unfair posters and doggerel rhymes his party helped to climb into power, but I think that this year he might have mitigated suffering by shifting some of the income-tax burdens with very little cost to the national purse.

#### *Unfair Tax on Joint Incomes.*

Take, for instance, the question of joint incomes of married people.

Few people realise that if A. has an income earned by the sweat of his brain, and his wife brings him in a modest income, both are added together and the income is assessed as if it belonged to one person. Now I desire to untax in some small degree married persons.

When the limit of exemption was raised some years ago from £150 to £160 it was truly stated by the then Chancellor of the Exchequer that for persons with £400 a year or less a sum of £160 for maintenance was a fair amount, and the relief granted was upon that basis. This amount, which is ample for a single person, can only be looked upon as totally inadequate for the maintenance of two persons, extra rent, extra rates, extra food, &c. It is not for a moment suggested that the cost of two persons' living and maintenance is double that of one person, but it can safely be assumed that, on an average, it can be taken as one and a-half.

It is for that reason that I suggest that the limit of exemption should be raised by 50 per cent. for married persons on the present limit of £160 granted to single persons. This would mean a rebate of £240 a year relief granted to married persons without children. Where there are children there should be a further relief granted for each child. This I should fix at £20 per annum for each child.

As this works out at a trifle over a shilling a day, it certainly cannot be called extravagant, if clothes, food, medical attendance, &c., are taken into consideration. I leave out the question of education, as it may be objected that they may go to Council schools and thus have free education.

At the same time as the limit of exemption is raised, for the purposes of abatement the limit of income upon which the taxpayer could claim this relief should be automatically raised in the same proportion. Thus the relief on £240 granted to married persons without children should be on an income not exceeding £600—that is, the £400 now granted to single persons, plus 50 per cent., and the £20 accorded to each child should be on an extra £100 a year.

Let me take a concrete case. A man is married and has two children. I ask that he should receive relief on £160 himself, on £80 for his wife, and on £40 for his two children, total £280, this relief being granted if the total income is less than £800 a year.

#### *Wide Relief at Trifling Cost.*

It will, no doubt, be objected by the Chancellor of the Exchequer that this system of relief will cost a considerable amount of money. I think that I can prove the contrary.

Let me assume that no fewer than 50,000 families are to receive this extra relief. The cost to the revenue would be, at the very outside, £200,000, or less than one-tenth part of what a penny in the pound of income-tax brings in, for the relief granted is only £4 for the wife and £1 for each of the children; but what do not these few pounds represent to a man who may have less than £300 a year? it may deprive him not of luxuries only, but of actual necessities.

Why I have said that the £200,000 would more than cover the amount required is that many of the persons to be relieved will only receive a part of the relief on account of their incomes being under £240 a year. Dealing with, say, 100,000 married couples suffering tax, there are, first, to be eliminated at least one-half whose incomes are under £160, and who consequently are already entitled to exemption. Fifty thousand now remain who, if they possess £240 a year, would be entitled to the full £4 relief proposed to be granted, but of these 50,000 it may safely be calculated that another half would not have the full £240, and consequently the extra relief granted to them would not on the average amount to more than £2.

The only persons who would benefit to the full amount of the £4 relief are those owning incomes of from £240 to £600. Dealing with children, relief only comes in where the parental income exceeds £240. It would therefore affect but a comparatively small number of persons, but at the same time would be an extreme boon to those to whom the relief would be granted. What I propose is not, of course, altogether new, for already there exists a modicum of relief granted to married persons who earn their own living independently of each other.

#### *The Great Block House.*

Where I fear I shall meet with the greatest opposition to my scheme is among the permanent officials of Somerset

House, for it appears to be their policy to throw every obstacle in the way of persons who, even now, are statutorily entitled to exemption or abatement. The Board of Inland Revenue are continually making new rules and regulations, even after sixty-three years of the existence of income-tax. I might mention as an instance their refusal to refund tax to a claimant if the dividends are not exclusively registered in his name. This refusal goes as far as not to refund income-tax to a claimant on his share of a dividend in his name if any part of such dividend belongs to another person, and to refund to joint beneficiaries under any circumstances whatever, unless a deed of trust or legal documentary evidence as to ownership can be produced to satisfy the Board.

Now comes one of the greatest difficulties. What is the kind of legal documentary evidence which is required to satisfy the Board? The Inland Revenue say that it is for the claimant to supply the evidence, which they will consider, but they admit that it is next to impossible for the claimant to produce any evidence which will satisfy them—an attitude worthy of Charles Dickens' Circumlocution Office. Consular and notarial declarations have been produced where the claimant has sworn as to his income, but all of these have been refused. It is against those arbitrary decisions given by the Board of Inland Revenue that I would ask that there should be some appeal. It is absurd to suggest that a person with less than £160 a year who considers himself to be aggrieved should have to go to the cost of appealing to the High Court for a decision upon a legal point. Why not have a Court of simple appeal where the claimant could personally state his case and obtain justice?

These are but a few examples of the way in which the income-tax is imposed and collected, but if I had space I could give many more. From the letters I have received on the subject I am certain that there is a deep feeling of resentment against the way this tax is retained and administered.

If all who feel aggrieved would only send in a postcard to the House of Commons, I think I could persuade the Chancellor of the Exchequer that I have a volume of opinion behind me of which he ought to take notice even before the Finance Bill of this year becomes law.

However, the taxpayer is such a patient beast, I suppose he will merely grumble—and pay. He seems too apathetic to combine.

### **Meetings for the ensuing Week.**

*Tuesday* — INSTITUTE OF CHARTERED ACCOUNTANTS. — Students Societies' Grants Committee, at 3 p.m.

*Wednesday* — INSTITUTE OF CHARTERED ACCOUNTANTS. — Finance Committee, at 12.30 p.m.; Council Meeting, at 2 p.m.



## Sir John Hollams' "Jottings."

(From *The Solicitors' Journal*.)

THE long-looked-for book of Sir John Hollams' reminiscences differs widely from the ordinary autobiography. There is very little about the writer, save in connection with the important cases in which he has been engaged; there is nothing about certain living legal personages with regard to whom one would greatly like to have the author's candid opinion. On the other hand, there is a great deal about the Judges and leading counsel of from twenty to forty years ago, and there are, as might be expected, suggestions of much value with reference to procedure and other portions of our legal system. The author commences his book by stating that his object is to call attention to the changes which have taken place during the period he can recall, with the idea that the consideration of what has been done may stimulate attention to improvements yet needed. It is the suggestion of these further improvements which constitutes the most important part of the book. The author's remarks are by no means of the drastic character we rather anticipated; we recall a conversation with him many years ago in which he strongly advocated the entire abolition of the law of bankruptcy, and adduced cogent reasons to show the advantage to the mercantile community of the adoption of such a course. It may be that, like his friend Lord Bramwell, he was not averse to a little paradoxical talk now and then. At all events, the contrast between the old and new systems of procedure which Sir John Hollams draws in his book is marked by great shrewdness, moderation, and calm judgment, and it ought to receive the careful attention of the authorities whose business it is to look after the working of our procedure.

The picture of the old system contained in this book is lurid as regards cost and delay to the suitor, but so brilliant as to profits of practitioners as to make the mouths of counsel and solicitors of the present day water. We read of pleadings, the record of which, if unrolled, would reach from Gray's Inn to the Temple; of briefs to counsel for every order for a special jury; of upwards of two hundred briefs, each with a fee of half a guinea, being delivered in one day to a barrister in ejectment proceedings to move for judgment against the casual ejector; of bills in Chancery of huge length frequently accompanied by elaborate and detailed schedules setting out accounts or other general matter; of everyone who had a scintilla of interest in the estate in question in Chancery being made a party and being represented by separate counsel on every application to the Court; of the Bill of Discovery, which had to be filed in the Court of Chancery by a defendant in a common law action who desired to see books or documents in his opponent's possession, and of cases in which actions at

common law were stayed for years, first pending a bearing in Court before the Vice-Chancellor as to the sufficiency of the answer as to documents and objections to their production, and subsequently by successive appeals to the Lord Chancellor, and from him to the House of Lords on that point.

There is much, by the way, in this story of the old system which is novel to us. For instance, the author says that solicitors in Chancery proceedings had to employ certain nondescript officials who were called "Clerks in Court," who sat in small boxes in a large room in Chancery Lane, and were paid by the solicitors instructing them. They were, he says, supposed to be experts as to practice, but were of no use to an experienced solicitor. Again, we were not aware that we owe to Sir John Hollams the practice of dividing affidavits into paragraphs, each numbered. It appears that he had on one occasion to prepare some affidavits in a hurry, and with a view to conciseness and ease of reference, prepared them in short paragraphs, each numbered. When these affidavits came before Vice-Chancellor Turner, he expressed strong approval of the way in which they were prepared, and soon afterwards the course adopted by Mr. Hollams became the rule.

There were, however, redeeming features in the old procedure and Courts. The Judges (in the common law Courts, at all events) were, says the author, "much more reticent than in more modern times," and trials did not occupy anything like the time they now take. "It used to be the exception for a jury case to occupy more than one day. Now a seriously contested case is seldom concluded in a day." And, costly as was legal procedure in the old days, it was generally possible then to give a reasonable estimate as to the time within which the litigation must end and the expense which it might involve. Under the new system this cannot be done.

It is the enormous cost of trials, frequently very disproportionate to the pecuniary importance of the case, and the "gambling element" connected with appeals to which Sir John Hollams points as the leading defects of the new system. As he says, "almost every decision is subject to the risk of appeal to the Court of Appeal, and from that Court to the House of Lords, and these successive appeals may conceivably happen more than once in the same case. The practical mischief from this unrestricted right of appeal arises from the modern system, introduced by the Courts without express legislative authority, of allowing the successful appellant the cost of the appeal and of the decision appealed from. Formerly this was unheard of, and consequently, even when there was power to appeal, it was not exercised, for the unsuccessful litigant knew that, even if the appeal should be successful, he would have to pay his own costs, and, if it

"was unsuccessful, the costs of his opponent also." The author expresses his opinion that the great majority of litigants would be content with a patient hearing before a Judge and to abide by his decision. Sir John Hollams might have added, as one of the evils of the present system, that the tendency of the institution of a largely-manned Court of Appeal is constantly to deplete the High Court of its most experienced and competent Judges, and so to encourage appeals from the decisions of their successors.

With regard to other matters, there is a valuable chapter on the administration of justice in the provinces, in which the circuit system is discussed and suggestions for its alteration are made. With regard to the County Courts, Sir John Hollams' view is—in accordance with what is understood to be the opinion of the present Lord Chancellor—that they should be branches of the High Court.

We have left ourselves little space to refer to the author's interesting reminiscences of deceased Judges. We observe with pleasure that he does full justice to Chief Justice Erle, who always seemed to us one of the finest examples of what an English Judge ought to be, and to Mr. Justice Willes, whom it seems rather to be the fashion nowadays for members of the common law bar to disparage; but for some reason or other he does not seem to appreciate the extraordinary powers as a Judge of Sir George Jessel. Lord Campbell was obviously the author's *bête noire*; and, indeed, we fancy that that "canny" Judge had few admirers among legal practitioners.

In the last chapter we come upon a very short sketch of Sir John Hollams' honourable career. It appears that when he was under the age of forty he was offered the appointment of Solicitor to the Admiralty, and was more than once asked if he would accept the office of Chief Clerk in Chancery. He concludes his book with the remark, "I have never had a serious personal difference with anyone, and have never been a party to a law suit. I may be said to have been fortunate, but I believe that the road to such success as I have had is open to any young man entering the profession who may choose to follow it, and devote himself to legitimate professional work, and abstain from money-lending, company promoting, financing builders, and speculative business, and give constant, careful, and anxious thought and attention to the professional business from time to time entrusted to him." Wise words these; but should it not be added that brains are also necessary to a success such as that attained by the writer?

## Review.

### Rates and Taxes: A Practical Guide.

By E. M. KONSTAM.

(Of the Inner Temple, Barrister-at-Law.)

London, 1906: Butterworth & Co.

This little work, although it does not, as suggested by its somewhat too comprehensive title, deal with the subject of

rates and taxes at large, nevertheless furnishes us with a very readable account of such as fall within its scope—viz., those incidental to real property.

The subject of Rates is conveniently discussed in three parts, the first of which deals with Rates outside the Metropolis, the second with Rates within the Metropolis, whilst the third treats of various matters common to both the preceding heads.

A fourth rather subsidiary part is devoted, under the somewhat imposing head of "Imperial Taxes," to the consideration of the Income or Property Tax as assessed under Schedules A and B, and of the Inhabited House Duty.

As an outline sketch of the subjects with which it professes to deal we consider the book of considerable merit, and together with its very full Index of Statutes it may well serve as a useful epitome of that branch of law.

Works of this kind, however, necessarily suffer from the defects of their merits, and whilst the student and layman may well be content with the general view of the subject which they afford, the professional lawyer can rarely rely on their unsupplemented aid in actual practice.

The Index is indeed, as its author suggests, full, but unfortunately, owing to an entire disregard of alphabetical arrangement in its sub-headings—an all too common fault to which we often have to allude—its usefulness is thereby greatly detracted from.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, May 25th, was 175, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 93; Deeds of Arrangement registered, 82. The respective numbers in the corresponding week of last year were: Bankruptcies, 104; Deeds of Arrangement, 92—total, 196; being a decrease of 21. The total number of commercial failures recorded during the 21 weeks of the present year is 3,544; the total number recorded in the corresponding 21 weeks of last year was 3,791, showing a decrease of 247.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, May 25th, was 146. The number in the corresponding week of last year was 159, showing a decrease of 13. The total number filed during the 21 weeks of the present year is 3,182; the total number filed in the corresponding 21 weeks of last year was 3,550, showing a decrease of 368.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week

ending Friday, May 25th, amounted to £1,322,068, by way of addition to £2,057,154, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,351,975, showing a decrease of £29,907. The total amount registered during the 21 weeks of the present year was £36,288,312 (in addition to the issues in previous years by the same companies), as compared with £31,015,576 for the corresponding 21 weeks in 1905, showing an increase of £5,272,736.

## The Profession in Scotland.

### Personal.

Messrs. R. B. McCaig & Mitchell, accountants, have removed from 183 West George Street, Glasgow, to the Edinburgh Life Buildings, 121 St. Vincent Street there.

### COURT OF SESSION.

#### Edinburgh—Outer House.

Before Lord Johnston.

May 25.

**Charles Simon Romanes (James Alison's Trustee) v. The Scottish Union and National Insurance Co. and others.**

#### *Sequestration—Trustee's Claim for Shares.*

In this action the pursuer asked for declarator that 150 "A" shares of the Scottish Union and National Insurance Company which stand in their books in the names of James Alison, Alexander Alison, and John Alison, executors of the deceased James Alison, merchant, Leith, belonged to him, and were his property as trustee on the sequestrated estate of James Alison, Junr., and that he was entitled to payment of all dividends which had accrued to the shares and were unpaid. The shares belonged to James Alison, Senr., who died in 1836, leaving a will in which he directed that his estate should be divided amongst his sons and daughters, his oldest son, James Alison, to receive the heritage and such portion of the movable estate as would be sufficient to make his share twice as great as that of each of the others. In 1846 the shares were registered in the books of the company in the names of the executors of James Alison, Senr. The estates of one of these, James Alison, Junr., were sequestrated in 1847, and the pursuer was trustee on his sequestrated estate, having been appointed in 1895, on the death of the then trustee. The pursuer contended that the estates of James Alison, Senr., were divided amongst the members of his family, in accordance with the provisions of his will, in the year 1837, and that James Alison, Junr., received the shares in question as part of his share, and that they now formed part of his sequestrated estate. The action was defended by the executors under the will of Mrs. Ann Alison or Anderson, one of the daughters of James Alison,

Senr., who denied that there was a full and final division of his estates amongst the beneficiaries, or that James Alison, Junr., received the shares in question, and averred that they still formed part of the executry estate of James Alison, Senr. The defenders were confirmed as executors of James Alison, Senr., on 17th August 1905. Proof was led on 28th February.

Lord Johnston assailed the defenders from the conclusions of the action, holding that there was no satisfactory evidence to show either that the estates of James Alison, Senr., had been divided amongst his children, or that the shares in question became the property of James Alison, Junr., and that the whole facts and circumstances, and in particular the fact that James Alison, Junr.'s, bankruptcy trustee never took any steps to realise or ingather said shares, created a strong presumption the other way.

### Bank Rate of Discount.

Sept. 28th 1905	..	..	..	..	..	4%
April 5th 1906	..	..	..	..	..	3½%
May 4th	..	..	..	..	..	4%

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## Leading Articles.

### The Outlook of Accountancy.

THE presidential address given by Mr. ERIC M. CARTER, F.C.A., to the members of the Birmingham Chartered Accountant Students' Society a short time since—a full report of which appeared in our issue of the 28th April last—is one that is eminently characteristic of the speaker, evidencing as it does a considerable amount of care and trouble in its preparation, and containing not a few ideas which we venture to think the majority of our readers must regard as novel, whether upon reflection they agree with them or not.

The key-note of Mr. CARTER's paper would appear to be that inasmuch as the profession of accountancy has changed greatly in character during its short life, there is no guarantee that further and equally important changes will not follow in due sequence. Those who bear in

mind that in 1880 practically everyone who had any pretensions to being an accountant, and a fair number besides, were admitted into the ranks of the Institute, which then numbered some 500 all told, and reflect that at the present time the Institute comprises something like 3,500 members (while the Society contributes something like 2,000 more, irrespective of its members abroad) must admit that at all events in the direction of growth there have been enormous advances during the past quarter of a century. Nor have these advances been confined to mere numbers. Notwithstanding the fact that a practitioner's expenses, whether in rent, rates, or salaries, have enormously increased during the same period of time, and while in no case has the scale of accountants' fees been increased, it will be admitted that, speaking generally, accountancy is more prosperous now than in 1880—a state of affairs which admits of only one possible explanation, namely, that the services of accountants are more extensively utilised by business men than was formerly the case. It is true that bankruptcy, which was formerly the sheet-anchor of a certain number of practitioners, has now taken a back place, but we are inclined to question whether there has been any decrease in the volume of such work itself. For any effective comparison to be made it must be borne in mind that whereas, say, in 1880 bankruptcy work represented for all practical purposes the whole of insolvency practice, at the present time such practice is divided into bankruptcy, deeds of arrangement, company liquidation, and receiverships. The last three forms have, of course, always existed, but it is only of quite recent years that they have assumed anything like their present pro-

portions, and therefore—quite irrespective of any question of officialism—it would be hardly surprising if the amount of actual bankruptcy work that has to be done at the present time should be slightly less than twenty-five or thirty years ago. The insolvency practice of the profession, taken as a whole, has certainly suffered no serious decline.

It is however, of course, upon what may be called the pure accountancy side that the most notable extension has taken place. In part, no doubt, this is owing to the enormous increase in the number of limited liability companies carrying on ordinary commercial or manufacturing businesses, but probably it is more because the tendency of the times is, as Mr. CARTER points out, all in favour of the concentration of business into the hands of a comparatively few large undertakings—a process which would be absolutely impossible without properly organised systems of control which the professional accountant is alone able to inaugurate and supervise with success. Personally we do not share Mr. CARTER's fear that auditing will be handed over to officials, as bankruptcy work has already been, partly because (as we have endeavoured to show) the advent of officialism in insolvency practice has really done accountants far less harm than was at one time feared, and partly because there are at the present time no indications of any general desire to substitute official for professional audits. On the contrary, so far as the matter can be described as of public interest, the tendency would certainly appear to be to abolish official audits, which have been found to be singularly ineffective in practice, and to substitute for them proper audits really worthy of the name, conducted by properly qualified accountants.

We do not personally regard the accountant as a sort of nondescript person who owes a temporary and precarious existence to the fact that as yet men of business have been too much occupied in extending their affairs to be able to acquire the necessary skill and experience to look after them in all particulars. The progress of accountancy and its material success are, we think, due to nothing so accidental, but to an underlying principle which, it seems to us, is hardly ever likely to become obsolete — namely, that no one, no matter how experienced and how far-seeing, can afford to neglect the safeguard afforded by the periodical review and criticism of his affairs by someone who, being entirely unconnected with his business, is able to bring an absolutely unbiassed judgment upon the matter in hand. Even if professional accountants did not by their training possess special qualifications for the position of auditor, it is, we think, incontestable that it is largely because their position is that of a disinterested onlooker that their services are so valuable. With large undertakings staff audits will very probably to an increasing extent take the place of detailed professional audits, and it is quite possible that in years to come an increasing number of members of the profession may devote the whole of their time to the services of one particular employer. But that the time is ever likely to arrive when, owing to this perfection of internal organisation, it is thought unnecessary to continue the independent professional audit, we for our part certainly do not believe. We scarcely agree with the assertion that a business man must be a fool or an accountant at thirty; but, even if it were true, he would still require the services of an independent accountant to check his own views and calcu-

lations, upon the same principle that no medical man ever attends himself.

The extent to which Mr. CARTER has overlooked this importance of independence is also shown by his expression of opinion that an accountant is not really the ideal person to carry on a liquidation or business in financial distress, but that a commercial man who has spent his life in the details of a similar class of business would probably know better how to manage it and how to realise it to the best advantage. The insolvency accountant of a generation ago had, of course, been such a man. He is fast dying out, and we are not aware that there has been any very great lament in business circles at his demise; but, however that may be, the business man of his time had sufficient acumen to see that the chief reason why the accountant should be appointed as trustee or liquidator was because, being unconnected with any business of a similar character, it was thought that he could at least be trusted to carry on or liquidate the business in the interests of those concerned, instead of playing his own hand. In many cases it would be unlikely that a creditor should satisfactorily and impartially discharge such duties. When a creditor accepts such a post he does so in almost all cases because his voting power is greater than that of all the other creditors combined, and because he hopes in that way to get a little of his own back. He would not usually be actuated by a desire to do something for the benefit of his competitors in trade.

But although, for the reasons that we have stated, and for others which we have not at present space to set out, we have no serious apprehension as to the continued and permanent vitality of professional accountancy, we

entertain not the smallest doubt that as years go by those who have qualified as Chartered Accountants will to an increasing extent be employed in purely administrative positions. From the point of view of the student, therefore, it is certainly wise to bear in mind that not every articled clerk can expect to become a member of a practising firm, and that, therefore, many other qualifications besides those laid down by the Institute's examinations may be highly desirable in practice as enabling their possessor to secure a better position than would otherwise be open to him. From this point of view, if from no other, we cordially approve of Mr. CARTER's suggestion that every accountant student should take up what we may call a second subject, and as far as possible make himself proficient therein. If he goes in for an all-round general business training such as that provided by the University of Birmingham and the University of Manchester, he will certainly find many positions open to him which would be closed to the man the sum of whose qualifications was embodied in the initials "A.C.A." If, on the other hand, he has any special leaning in some particular direction, then unquestionably what we may call a first-class elementary course in engineering or some other kindred subject would doubtless prove extremely valuable. While it is undoubtedly true, as Mr. CARTER states, that the departmental and costing accounts kept by large factories are now far in advance of what was attempted a few years ago, there can be little doubt that there is still enormous room for improvement in this direction; and it may be added that Cost Accounts at least are not likely to arrive at any very high degree of development so long as accountants who have absolutely no knowledge of constructive methods, and care

less about them, consider that they are competent to formulate costing schemes. As the only man connected with the factory who knows anything whatever about accounts, the question must, of course, be relegated to him if it is to be dealt with in any form at all; but practical observers may well question whether a system that is all theory and no practice is likely to prove more efficient in the long run than one which is practical so far as it goes, but unworkable because put together without any knowledge of the science of accounts. For such a purpose as this, it must be admitted that both an accountant and an engineer are required. If accountant students acquire the necessary knowledge of constructive work an enormous and practically unoccupied field will lie before them. But they must be prompt to seize the opportunity, or they will find that it has already been taken possession of by engineers, who, in Birmingham at any rate, have already included a course of accounting as part of their curriculum; not, of course, with a view to making their graduates competent accountants, but with a view to giving them such a general training in accounts as may enable them to know what they require and the advantages which they may expect to derive from really efficient and practical systems of accounting.

In the space of this somewhat lengthy article we feel that we have done but scant justice to Mr. CARTER's extremely interesting address, inasmuch as we find that we have occupied ourselves chiefly in combating some of the views that he has put forward; but there is much in the paper now before us with which we cordially agree, and which will, we think, prove of the utmost possible benefit to Mr. CARTER's audience. But there is little to be gained by re-enforcing points

that have already been ably made, and our object has been rather to throw some additional light upon matters which, it seems to us, are more debatable, and, therefore, more likely to receive the serious attention of the maturer of our readers.

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### Points in Company Practice.

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WE had not at first intended to comment upon the short papers on "Points in Company Practice," read at a recent meeting of the Manchester Chartered Accountants Students' Society, which were reported in our issue of the 21st April last, as any serious criticism of a student's work is apt to be needlessly discouraging to its author, while in general there exists no very vital reason for combating views that may be debatable, unless such views be put forward with the support of a name which of itself carries weight and authority. An esteemed correspondent has, however, drawn our special attention to the general attitude adopted in the second of the two papers referred to; and inasmuch as that attitude, while essentially natural to the young and enthusiastic student, is eminently unpractical, we think it would perhaps be well under the circumstances to point out in some detail the fallacy which underlies some of the arguments.

There is undoubtedly a distinction between the position of the auditor of a public company and the auditor to a private firm, but that distinction has nothing whatever to do with the magnitude of the fee involved, nor is it an essential factor in the situation. An accountant who undertakes the duties of an auditor must in all cases duly discharge those duties,

irrespective of the amount of the fee that he has agreed to take, or of any instructions that he may have received from any source whatever. But whereas in the case of a company nothing short of a complete audit can be permitted, in the case of a private firm it is quite competent for the accountant to arrange with his clients for a partial investigation, or partial audit as it is called; and in such cases his responsibility will be limited to the performance of those duties which he undertakes to perform, but (as appeared from a case which was noted in our Law Reports a short time since) it is very important that there should be a clear understanding in all cases where anything short of a complete audit is to be done. It would be interesting to know, moreover, upon what authority it is stated that the auditor of a one-man company has a distinct liability not only to the practically sole shareholder, but also to future outside shareholders who may be induced to subscribe on the strength of his signed Balance Sheets, and to creditors to whom the Balance Sheet may be shown for the purpose of getting more credit, or staving off pressure, and who rely upon his signature as auditor for its *bona fides*. We do not, of course, put it forward as a counsel of professional conduct that an auditor need consider absolutely no one save those to whom he is legally responsible, but it is at all times clearly desirable to distinguish between legal responsibility, moral responsibility, and professional responsibility, and one of the authors has undoubtedly got these various forms of responsibility badly mixed. In his present frame of mind he may not perhaps see the necessity for drawing the distinctions to which we have referred, but he will no doubt do so in good time; certainly if he is ever unfortunate enough



to commit some error of judgment himself, probably when a concrete case arises and he has to make up his mind as to whether or not the auditor who is being attacked was to blame or is worthy of such professional support as can be afforded him.

Quite apart, however, from any question of hair-splitting as to the various shades of existent or non-existent responsibility, we have no hesitation in saying that the duty of an auditor, from whatever point of view it be regarded, is invariably to protect his client, and never to protect his client's creditors. An auditor who conspires with his client to defraud the latter's creditors is, of course, responsible, and one's duty towards one's client need never bring one within measurable distance of a criminal conspiracy; but the idea that it can under any possible circumstances be part of an accountant's professional duty to give his client away to creditors is most mischievous, and certainly ought not to be allowed to go uncorrected. If an auditor, acting upon his client's instructions, himself makes certain representations to that client's creditors, or places certain documents or accounts before them, he will, of course, be responsible for the accuracy of his own statements and representations, but it is no part of his duty *quâ* auditor to interview creditors; and in framing his auditor's report he is certainly under no obligation to consider how it would strike a creditor or prospective creditor if it were shown to him. As a rule an auditor has quite enough to do to consider the interests of his own clients the shareholders; and if in addition he bothers about others with whom he is in no way concerned there is, it seems to us, at least some risk that in the attempt to discharge a magnificent but non-existent public duty he

may fail in the performance of that duty for which he has been specially employed and paid.

Finally, we may point out that the suggestion that the auditor's report is in general "the usual formality" is calculated to imply that the same remark applies to the audit itself. It is, no doubt, because many shareholders regard the whole audit as a formality that the position of auditors is less satisfactory than it might be. Certainly no improvement in that position is likely to be experienced until the profession has succeeded in educating the public up to a due appreciation of the importance of the duties an auditor discharges. One of the most important of those duties is, however, to clearly distinguish between the material and the immaterial, between the essential and the unessential, between the false and the true.

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### Weekly Notes.

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**A New System of Account Books.** A correspondent writes asking if we can give any further information with regard to the invention described upon p. 484 of our issue of the 14th April last. It is extremely difficult to explain the principle by the aid of mere words, but we will endeavour to make the attempt. In the ordinary process of adding a book of account, the total of the column is placed at the foot of the page, then carried forward on to the top of the next page, and the process repeated from page to page until the desired total is arrived at. Occasionally, however, each page is added separately, and a summary then constructed of the page totals in order to arrive at the grand total. Both methods involve repetitions of figures, and considerable risk of error, but of the two doubtless the second is to be preferred in all cases where the totals run into big figures. The invention to which we have already drawn attention consists of a specially constructed account book, which has the lower edges of the pages cut in steps of four, so that when the total of p. 1 is put at the foot of the column, it is written not upon p. 1, but upon the last line of p. 4, which is longer than

any of the preceding three. Page 2 is one line shorter than p. 1, and its total is therefore written upon p. 4 on the line above the total of p. 1. Similarly p. 3 records its total on p. 4, a line above p. 2, and the total of p. 4 itself is placed upon the top of all. Thus, without any process of carrying forward totals, and without incurring the risk attendant upon that process, the totals of four pages are got together. The number of cut pages might, of course, be exceeded in practice, but in any event there must be some limit, as, of course, each succeeding page prior to the last is a line shorter than the others, and the point would thus inevitably be reached when, instead of being a page at all, it represented a mere slip. The totals of each group of four pages are transferred to a summary, which is either a loose sheet or a limp book so arranged that it can be readily placed under the fourth page, its last line extending below the bottom of that page. The addition of the four totals on p. 4 is thus extended direct on to the slip. Similarly, the addition of the four totals on p. 8 may be extended on to the slip upon the line above the previous total, and the process may be continued indefinitely. For certain purposes it seems to us that the idea is well worth developing, and would be especially useful in connection with Day Books, Stock Books, and the like, the totals of which often run into very large figures. The question has been raised by a correspondent as to what there is in this that can be made the subject-matter of a patent. For obvious reasons, no mere idea can be patented in this country. We understand, however, that the invention claimed is the use of a book with the lower edges of the pages cut into slips with a view to facilitating the addition of the figures recorded upon those pages. There could be no valid patent for the taking over of totals upon an independent sheet placed conveniently under the sheet about to be added, for that is a process which has been in more or less general use in this country for an indefinite period; but, so far as we know, the book cut in steps has the merit of novelty, and inasmuch as the process need add little or nothing to the cost of production, there is, to say the least of it, no reason why the system should not receive a trial. At the same time, we shall be very much interested if any of our readers can tell us whether they have ever come across anything of the kind in the course of their practice. The idea of certain pages of a book being cut short in order to avoid the repetition of headings is doubtless familiar to all, and we know of

many cases where some of the sheets are of less width than the rest. We do not, however, remember having observed any previous case of pages being arranged of various lengths.

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**Official Audits.** Several correspondents have drawn our attention to an article entitled "Poor Law Scandals and the Audit Farce" which appeared in the *Eastern Post and City Chronicle* on the 26th ult. In view of the widespread interest which this article has aroused, we have thought it worth while to reproduce it in these columns. We should like it to be understood, however, that while doubtless the statements there made are literally true as to the past, they must, we think, be regarded as somewhat of an exaggeration as applied to the present state of affairs. Official auditors are still anything but duly qualified accountants, but they do at least, so far as their attainments will permit, honestly attempt to discharge their duties, and their faults and indiscretions are the result of ignorance and lack of experience rather than of sheer indifference. All the same, the case for a thorough reorganisation of the department is none the less strong for the reasons that we have mentioned, and we hope, therefore, that some good may come out of our contemporary's exposure.

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**Local Authorities and Unauthorised Borrowings.** We are pleased to observe that our contemporary the *Local Government Chronicle*, commenting upon the recent decision of Mr. Justice Farwell in the case of *The Attorney-General v. de Winton*, makes no effort to belittle the irregularities of the Tenby Corporation in borrowing from its treasurer, the manager of the local bank, moneys which it had no statutory sanction to borrow at all. In this respect our contemporary sets a worthy example to the *Municipal Journal*, whose mistaken zeal for municipalisation in all its excesses can of course only do harm to the cause it seeks to promote. At the same time it must be conceded that under certain circumstances the red-tape which surrounds all municipal borrowing may sometimes prove anything but an advantage to the ratepayer whose interests it is supposed to safeguard. At the time of writing, the bailiffs are in possession of the Town Hall of a small Local Authority in the Midlands in pursuance of an execution issued by a contractor for work done. Owing apparently to some oversight the authority in question omitted to secure the necessary powers enabling it to

raise a loan sufficient to pay all liabilities incurred, and accordingly an execution has been put in for the balance unpaid. Eventually, of course, the sanction will be obtained and the execution paid out, but in the meantime costs will necessarily have been incurred which will not come out of the pockets of those owing to whose negligence the present *impasse* has been brought about, but out of the pockets of the ratepayers. They doubtless would have preferred it had their Corporation added a further irregularity to the first, and satisfied the contractor's demands by an overdraft raised upon the bankers. Doubtless, however, in view of the decision in *The Attorney-General v. de Winton* no such overdraft could be obtained, and thus here, as always, it is the ratepayer who has to pay the piper for the carelessness or inefficiency of his chosen representatives.

#### Misleading Statistics.

A daily contemporary furnishes certain particulars as to the growth of railways in the United Kingdom from 1903 to 1905, from which it draws its own conclusions. The figures cited are uniformly progressive, with the exception of the number of second-class passengers conveyed, which are steadily retrogressive, being 73 millions in 1903, 71 millions in 1904, and 51 millions in 1905, a falling-off which is described as remarkable. One of the greatest troubles of those who make a study of statistics, as of those engaged in more practical problems of daily life, is to distinguish between cause and effect. Our contemporary seems inclined to assume off-hand that the number of persons desirous of travelling second class upon railways is upon the decline. Before, however, any opinion can be expressed upon this point, it seems to us important to inquire what facilities the railway companies afforded for this form of travelling in each of the years named. It is, of course, conceivable that the second class is becoming unpopular, but it is notorious that it is unpopular among railway companies, inasmuch as any class distinction considerably increases their working expenses. To take an extreme case, if the second class were universally abolished the number of passengers conveyed would naturally be *nil*; it would not, however, on that account follow that no one desired to travel second class. We mention this point not because its particular application is of any very special interest to our readers, but because it illustrates a tendency towards over-hasty generalisation which is absolutely fatal to all sound conclusions.

Statistical information properly applied may be of the greatest practical value; in the hands of those that cannot utilise it, and cannot distinguish between cause and effect, it is as likely as not to prove actively harmful.

#### An Old Bankruptcy.

We are informed that a Dublin solicitor, while investigating the affairs of a client, recently discovered that he was the representative of one of the assignees in the bankruptcy of a merchant which took place as far back as 1797. Further investigations into this somewhat ancient bankruptcy revealed the existence of a sum of £1,500 to the credit of the estate, which, we are told, would enable a dividend of nearly twenty shillings in the pound to be now paid to the creditors of an eighteenth century bankruptcy, provided, of course, that they or their representatives can be traced. At this point our information breaks off, but it would certainly be interesting to know how it came about that so substantial a sum as £1,500 remained undistributed for one hundred years. If it remained in the hands of the assignees all that time it seems to us that both the descendants of the creditors and the descendants of the bankrupt would have a claim to interest, which in the course of that time would naturally amount to a very much larger sum. Assuming, therefore, that the whole matter is probed to the bottom, and that the descendants of the various interested parties can be found, it would appear that the next-of-kin of the Dublin merchant who failed in 1797 would be entitled to a very substantial fortune, as representing the surplus of this estate after allowing for the difference between 4 per cent. payable to the creditors and 5 per cent. recoverable from the assignees.

#### The University of New Zealand and Commercial Degrees.

We understand that the University of New Zealand has now formulated a course in Commerce leading to the degree of Bachelor of Commerce. Candidates, who must be matriculated students of the University, are required to pass the first examination not sooner than two years after examination in the following subjects:— (1) French or German, (2) History, (3) Geography, (4) Economics, (5) Mathematics, Physics, Chemistry, or Geology, (6) Accounting. The second examination, which must be taken not sooner than one year after the first, comprises the following subjects:—

(1) Commercial Law, (2) Statistical Method, (3) Commercial French or German, (4) Accounting, or one of the subjects comprised in Section 5 of the first examination not previously taken, (5 and 6) two of the following: Actuarial Mathematics, Industrial Law, Economic History, or Currency and Banking. Without going into details, it will be seen that the New Zealand course differs somewhat from those prescribed at both Birmingham and Manchester, being apparently somewhat more academic than either of these. On the other hand, the fact that some science is compulsory strikes us as being in its favour, inasmuch as the most serious danger to be guarded against in these commercial degrees is that of making them too commercial.

**Graduated Taxes in Natal.** A Reuter's telegram announces that a Bill has been introduced in the colony of Natal which provides that incomes up to £500 shall be free from tax, that the next £500 shall pay 3d. in the £, the next £1,000 6d., the next £3,000 9d., and incomes beyond £5,000 1s.

**Crossed Cheques in France.** At a recent sitting of the Society of Political Economy of Paris a long discussion took place on the use of crossed cheques. In this country and the United States the crossed cheque has, of course, come to stay, but our neighbours in Gaul appear to fight very shy of the convenience, possibly because it is but little understood. It is said that the unpopularity of the system in France is due to the fact that the person who accepts the cheque cannot be sure of its being honoured unless he happens to know there is a sufficient balance at his customer's bank to meet it. It is even suggested that cheque books should only be supplied to those who can find two guarantors for the validity of their signature, but this would be very impracticable and clumsy. The French merchant, accustomed as he is to cash transactions, doubtless looks askance at the new credits, but if he could but be persuaded to take his courage in both hands, the use of the new medium would make itself very beneficially felt in a short time.

**Points in Partnership Law.** The facts in the recent case of *Sturgeon v. Salmon* were, briefly:—Defendants were sued for work done for the firm twelve months after one of the partners in the firm had sold his interest in the concern to one of his co-partners. In

the articles of partnership it was provided that, in the event of any partner desiring to retire, one calendar month's notice in writing should be given so that his share might be purchased by the remaining partners. This clause had not been complied with, the third partner not being aware of the assignment for some time and then he disapproved of it. It was held that, as proper notice of intention to retire had not been given, the partnership continued. The writer of Legal Notes in *The Financial Times* remarks that the whole case was dealt with as if the partnership were at will, and it is pointed out that a provision as to any length of notice to be given is inconsistent with the idea of a partnership at will. In other partnerships, of course, the assignment of his share by one partner to another only gives the remaining partners a right of applying to the Court for an order for dissolution. The recent case of *Wheatley v. Smithers* raises an interesting point as to whether a firm of auctioneers is a trading firm, the precise difficulty being a question of liability on a bill of exchange. Every member of a trading firm would have an implied power to accept bills of exchange in the ordinary course of business, and in some cases usage or custom may establish such an implied power even where a non-trading firm is concerned. It appears that the bill was accepted in connection with a joint adventure outside the partnership business, but since the argument was confined to the question of trading, it is sufficient to note the decision that a firm of auctioneers is *not* a trading firm. Echoing a contemporary, we wonder whether a jobber on the Stock Exchange could be said to be a trader though a broker is not?

**The New  
Winding-up  
Practice.**

Cases showing evidence of the Courts' intention to grant winding-up orders, even where it appears that the assets of the company are not more than sufficient to discharge the claims of the debenture-holders, are becoming more common every day. The latest decision, in the case of *In re The Crigglestone Coal Company, Lim.*, indicates that an unpaid creditor of a company which shows insolvency is entitled, *ex debito justiae*, to a winding-up order if the majority of the class of creditors which petitioner represents desire and agree. It is also clear that an order will also be made where investigation is required, or where it may be desirable to give the unsecured creditors control of the defence to the debenture-holders' action.

Practitioners will do well to watch current reports, for compulsory orders are becoming quite fashionable.

**What is a Partnership?** A certain limited liability concern announces that by means of a sub-concern called an Amalgamated Agency (entirely separate, however, from the company), coal consumers might, so to speak, come in on the ground floor as regards profits. The following appears to be the root idea:—

"For every eight tons of coal which you order through this agency within a period of five years you are given a certificate of the value of £1 sterling. Each certificate will participate in an estimated yearly dividend of  $7\frac{1}{2}$  per cent. immediately it is completed. Each completed certificate will entitle the holder to three shillings per ton discount off the ordinary agency prices on not more than two tons per year per certificate."

A first and final payment of one shilling is desired for each certificate, and the agency has the right to redeem the certificates at £1 5s. each, there being also a scale of surrender values for those who cease for twelve months to purchase at least one ton of coal through the agency. *The Financial News* pilloried the point and pertinently asked whether or not the terms constituted a partnership (with the consequent liability). We need not follow our contemporary through all the arguments put forward. It will suffice if we quote briefly:—

"It is somewhat hard to distinguish certificate-holders entitled to  $7\frac{1}{2}$  per cent. per annum on the nominal value of their certificates, before the joint managers participate in the profits, from preferred shareholders in an unlimited company. We feel no certainty that a Judge would not interpret an association of holders of 100,000 certificates, on each of which a cash payment had been made, as a company of over 20 persons, and therefore illegal unless registered under the Companies Acts. The certificate-holders have no voice in the management of the agency; but that affects only their status, and not that of the undertaking."

Promptly on the publication of the article in question came the reply of the solicitors concerned in the matter, who, having consulted counsel, sent the following summary of his "opinion":—

"I am of opinion that the proposed scheme for enlarging the scope of this agency is not within the operation of the Companies Act, 1862, Section 4, which provides that no association constituting more than 20 persons shall be formed, after the commencement of that Act, for the purpose of carrying on any business (other than banking) that has for its objects the

acquisition of gain by the association unless it is registered as a company within the Act.

The object of this restriction was to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies, so that persons dealing with them did not know with whom they were contracting. Now, here, this object is not contemplated. The agency carry on the business quite irrespective of the proposed trustees for the certificate-holders, and without consultation with or authority from the certificate-holders.

If the scheme is worked out on the footing mentioned to me in conference, I do not think that there can be any suggestion of a partnership between the agency and the certificate-holders of the trustees, so as to render either the certificate-holders or the trustees liable as co-partners with the agency."

The point is an interesting one, and it would be instructive to have it well threshed out.

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## Current Law.

### COMPANY LAW.

*In re Ehrmann Bros., Lim.*

Joyce, J.

An order made under Section 15 of the Companies Act, 1900, extending the time for the registration of debentures does not grant a preference to debenture-holders over the claims of unsecured creditors whose debts have accrued prior to the registration. *In re Anglo-Oriental Carpet Co., Lim.*, followed with regret.—(*Times*, June 1.)

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## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

**Re Smith v. Sheard.**

*(To the Editor of The Accountant.)*

SIR,—I read the report of the above case in your last week's issue with great interest, and as the distinction

between a "complete" and a "partial" audit is one of no little importance to accountants practising in this country, I trust the matter will be taken up vigorously with a view to a new trial, for instance, should such a course now prove possible.

Your leading article appears to me to deal fully and fairly with the point at issue, which, of course, has nothing to do with the nature of the contract made with Mrs. Smith's *creditors*, and I, for one, shall be glad to contribute (say) five guineas to the cost of having the decision tested.

By the way, is this not a case in which the English Institute could take an effective part?

Yours faithfully,

Dublin, 30th May 1906.

JOHN MACKIE.

### The Society of Accountants and Auditors.

(To the Editor of *The Accountant*.)

SIR,—To an ordinary person it would seem that when there is a controversy, both parties to which being desirous of settling, there should be no statements made which, offensive in themselves, cannot be proved to the hilt.

There is such a statement in your issue of to-day, where, referring to the Society of Accountants and Auditors, you say "it must be admitted that it includes no practitioner of first-class insolvency practice."

It is not admitted. It is denied. Any Chartered Accountant, say in Manchester, giving it as his opinion, would be laughed at by his *confrères*, if indeed an accountant could be found so blind to everyday occurrences.

Yours faithfully,

ONE OF THE SMALLER FRY.

Rochdale, 2nd June 1906.

[We have no desire to indulge in personalities, but if it should be necessary to go to the provinces for an example, we think our contention must be regarded as proved.—ED. ACCT.]

### The Chartered Societies Bill.

(To the Editor of *The Accountant*.)

SIR,—I agree with your remarks that it is only right, fair, and honest that persons who falsely represent themselves as members of a learned society of which in point of fact they are not members, should be restrained

from continuing to perpetrate that fraud. But would the Bill do that? It certainly would not prevent persons who are partners from using the description "Chartered Accountants," when only one of the firm was a Chartered Accountant. It is well known, and seems to me nothing short of a disgrace, that many firms call themselves "Chartered Accountants" which have no right to designate the firm by such a description. One member may be a C.A., the other member may be a stockbroker, a capitalist, or even an ex-tailor, or a man who has been "plucked" in his exams., yet the firm is called "Chartered Accountants." This is no doubt a far-reaching question, as it affects many firms, but until it is honestly faced by the Councils of the Chartered Accountant Societies, they have no right to pose as censors of other people. It is not enough to say that for the future this is to be put right. So long as it is possible for two men to join in partnership, one a C.A., and the other not, and that firm to be called "Chartered Accountants," so long will it be impossible for the Chartered bodies to feel they are not parties to a "fraud."

I would also like to point out that the memorandum attached to the Chartered Societies Bill is very misleading, even as an *ex parte* statement. It is stated that the object of the Bill is *inter alia* for the purpose of improving the "training" of the professions represented by the Chartered Societies and Institutes. There is not one word in the Bill as to "training." Further reference is made to the "professional designations," and "distinctive initials" which they are entitled by *virtue of their Charters* to use. So far as the Scottish Chartered Accountants are concerned, they have nothing in their Charters to warrant the use of distinctive initials.

As a member of one of the Chartered Societies said to be interested in the promotion of the Bill I must say I have never heard the slightest suggestion of any urgent need for it, and until the Councils of the Chartered Accountant Societies honestly face this question and purge their own households of firms which misrepresent themselves as "Chartered Accountants" when they are not, they can never expect Parliament to listen to them. The whole question shows the urgent need of something being done to put the profession as a whole on a sound business-like basis.

Yours, &c.,

4th June 1906.

**Accountancy in Australia.***(To the Editor of The Accountant.)*

SIR,—In your "Weekly Notes" of the 17th March, under the heading of "Accountancy in Australia," you state that "it may be of interest to our readers to learn that the Heralds' College has issued a coat of arms for the accountants in Australia, which has been duly forwarded through the Colonial Office to the representatives of the different States."

In order to avoid any misapprehension on the part of your readers—particularly your Australian readers—I will thank you to correct the above statement. The facts are as follows. The Patent of Arms referred to was, by virtue of the warrant of the Earl Marshal of England, assigned by the Garter King-at-Arms to the Fellows of the Corporation of Accountants of Australia, and was forwarded by the College of Arms through the Colonial Office to our State Agent-General in London, who has forwarded it to Sydney. Arrangements are now being made for the Patent to be officially handed by our State Governor—Sir Harry Rawson—to the Council of the Corporation of Accountants of Australia.

Thanking you in anticipation,

I am, dear Sir, yours faithfully,

S. J. CARRUTHERS,

Hon. Secretary,

The Corporation of Accountants of Australia.

Sydney, 28th April 1906.

**Abortive Company: Landlord's Right of Distress.***(To the Editor of The Accountant.)*

SIR,—I shall be glad if you will give me your advice on the following questions:—

A limited liability company goes into voluntary liquidation on the 19th May 1906. The company had only been registered a few months. It took over a business which was carried on formerly by the vendor to the company, and the company agreed to pay certain claims of the vendor which included the rent of the premises he occupied. The company did not make any arrangements for tenancy with the landlord, but continued to use the premises of which really the vendor was still the tenant. A quarter's rent was due on March 29th last, and has not been paid. The landlord to-day levies a distress for this quarter's rent on the goods belonging to the company which are on these premises of which the vendor to the company

was the tenant, and which the company was occupying, but had not made any tenancy arrangements with the landlord, but was simply continuing in the same tenancy as the vendor to the company. Seeing that the company is now in liquidation, has the landlord a right to now levy a distress for this quarter's rent which was due on March 29th last?

The distress warrant is made out to the vendor to the company, but they have distrained upon the goods belonging to the limited company. Can the landlord do this?

I am, yours faithfully,

31st May 1906.

G. B.

[Yes.—ED. ACCT.]

## The Institute of Chartered Accountants in England and Wales.

At a meeting of the Council, held on Wednesday, the 6th June 1906, at the Hall of the Institute, Moorgate Place, E.C., there were present:—Mr. John Gane (President), in the chair, and subsequently Mr. W. B. Peat, on his election as President, Mr. J. B. Ball (Vice-President), and Messrs. W. Ashworth, J. W. Barber, J. H. Blackburn, W. Blease, E. M. Carter, Ernest Cooper, Sir John Craggs, Mr. E. Edmonds, Sir Walter Fisher, Messrs. J. Ford, A. H. Gibson, T. Gregory, J. G. Griffiths, J. E. Halliday, J. S. Harwood-Banner, M.P., A. C. Harper, D. Hill, W. C. Jackson, F. A. Jenkins, C. Fitch Kemp, G. Walter Knox, A. O. Miles, F. J. Saffery, T. G. Shuttleworth, G. Sneath, W. A. Stone, J. M. Wade, T. A. Welton, F. Whinney, T. Wise, J. W. Woodthorpe, and F. J. Young.

Mr. W. B. Peat was elected President, and Mr. J. B. Ball was elected Vice-President.

A vote of thanks was passed to the late President (Mr. John Gane) for his services during the past year.

The Examination Committee reported the following notices for the Examinations in May and June:—

Intermediate, 22nd and 23rd May 1906	..	195
Final, 29th, 30th, and 31st May 1906	..	183
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The following Committees were appointed for the ensuing year:—

(President and Vice-President ex-officio members of all Committees.)

### Applications.

Ball, J. B.  
Blackburn, J. H.  
Bowden, T.  
Carter, E. M.  
Edmonds, E.  
Gibson, A. H.  
Halliday, J. E.  
Harper, A. C.  
Kirby, H. Woodburn  
Plender, W.  
Shuttleworth, T. G.  
Sneath, G.  
Wade, J. M.  
Woodthorpe, J. W.

### Examination.

Ball, J. B.  
Barber, J. W.  
Bowden, T.  
Fox, W. H.  
Gane, J.  
Gibson, A. H.  
Gordon, J.  
Gregory, T.  
Halliday, J. E.  
Hill, D.  
Kirby, H. Woodburn  
Knox, G. Walter  
Pixley, F. W.  
Plender, W.  
Saffery, F. J.  
Shuttleworth, T. G.  
Wade, J. M.  
Wise, T.  
Young, F. J.

### Finance.

Barber, J. W.  
Blease, W.  
Bowden, T.  
Carter, E. M.  
Craggs, Sir John  
Ford, J.  
Gordon, J.  
Gregory, T.  
Hardcastle, B. W.  
Hill, D.  
Jenkins, F. A.  
Miles, A. O.  
Stone, W. A.  
Young, F. J.

### Investigation.

Ashworth, W.  
Blease, W.  
Halliday, J. E.  
Hardcastle, B. W.  
Harmood-Banner, J. S.  
Jackson, W. C.  
Knox, G. Walter  
Miles, A. O.  
Pixley, F. W.  
Sneath, G.

### INVESTIGATION (continued)

Waterhouse, E.  
Welton, T. A.  
Wise, T.

### Library and Publication.

Fox, W. H.  
Hardcastle, B. W.  
Jackson, W. C.  
Pixley, F. W.  
Saffery, F. J.  
Woodthorpe, J. W.  
Young, F. J.

### General Purposes.

*The Chairmen of the other  
Committees, and*

Cooper, Ernest  
Edmonds, E.  
Fisher, Sir Walter  
Gane, J.  
Griffiths, J. G.  
Harper, A. C.  
Kirby, H. Woodburn  
Knox, G. Walter  
Miles, A. O.  
Peat, W. B.  
Shuttleworth, T. G.  
Sneath, G.  
Whinney, F.

### Parliamentary and Law.

Cooper, Ernest  
Craggs, Sir John  
Ford, J.  
Griffiths, J. G.  
Harmood-Banner, J. S.  
Kemp, C. F.  
Knox, G. Walter  
Miles, A. O.  
Murray, A.  
Peat, W. B.  
Pixley, F. W.  
Waterhouse, E.  
Welton, T. A.  
Whinney, F.

### Students Societies' Grants.

Griffiths, J. G.  
Kirby, H. Woodburn  
Knox, G. Walter

The Secretary reported the death of Mr. A. Wakley, A.C.A., London.

At a special meeting of the Council, held on the 2nd May 1906, Mr. Thomas Frederick Armstrong, A.C.A., of 14 Ironmonger Lane, E.C., was excluded from membership of the Institute.

## Reviews.

### The Dixondale Lightning Ledger.

The London Printing and Stationery Co., 20 Whitecross Place, Finsbury Square, E.C.

The form of Ledger now before us is evidently designed to compete with the Loose-Leaf Ledgers, which are now becoming so popular, and it must be admitted that it presents an amount of elasticity which we had not previously thought was practicable within the limits of a bound book. So far as it is possible to describe a device of this description without the aid of diagrams, we may mention that the Ledger is framed upon the line that there is an index cut right through it, space being provided for fifty accounts for each pair of letters, regarding the alphabet for this purpose as consisting of twenty-two letters. Each guide page provides a vowel index for that section, and there is a further number index cut inside the letter index, so that every page of the alphabetical section at which the Ledger is open is in sight and can be turned to instantly. The difficulty experienced with all bound Ledgers of dealing with long accounts is met by providing 150 further pages at the end of the Ledger, to which long accounts can be transferred. With these also there is a numerical index cut right through the margin, so that the pages can be referred to far more expeditiously than is capable with any form of Ledger, other than the Card Ledger, of which we are acquainted. The Dixondale does not, of course, get over the most serious objection to a bound Ledger—namely, the trouble involved in opening a new Ledger from time to time—but within its limitations it will certainly be found most useful.



**"Your Business at a Glance" Account Book.**

By A. L. DIXON McINTOSH.

London, 1906: The London Printing and Stationery Co.,  
20 Whitecross Place, Finsbury Square, E.C.

Price 1s. net.

This is one of the numerous devices produced from time to time with a view to enabling small tradesmen to prepare their own Balance Sheets and Profit and Loss Accounts. The practical difficulty in the way of the success of such devices is that the average tradesman is not sufficiently interested in the matter to appreciate the desirability of reliable accounts. If he were, he would not stop short at an expenditure of one shilling, but would employ professional assistance, which in these days can readily be obtained at a nominal price. He might then not merely have before him reliable figures showing the position and progress of his business, but might also have properly explained to him the true significance of the figures so disclosed.

**Essential Qualifications for the Public Accountant.**

By THOMAS P. RYAN, C.P.A.

Address delivered at New York University School of Commerce, Finance and Accounts, April 10th 1906.

Our business this evening is an attempt to arrive at a knowledge of the qualities requisite to success in the profession of public accountancy, which, like every other profession or calling, has its own fundamental requisites, and briefly to analyse them and the results obtained by their possession.

Probably in no previous age were men called upon for greater knowledge in relation to whatever field of work in which they may be engaged. Consequently, the man seeking prominence should be equipped with a good education, as it is no longer a question—all other things being equal—who has the advantage as between the college-educated man and his less fortunate opponent. This condition has been brought about largely through the con-

stantly increasing large combinations of capital, which necessitate a higher class of organisation, superior methods of conducting business, and necessarily a higher and more thoroughly trained class of workers. The greater the degree of organisation, the greater necessity for the accountant, without whom, after all, little or no business can be conducted with intelligent knowledge.

Now, with special reference to the aspirant for future success as a public accountant, another natural result of the conditions stated is that he, perforce, must be thoroughly well qualified for his profession, and should have such an education as to fit him for the duties which of necessity devolve upon him; and the higher this degree of education the greater will be his chance of success in his chosen field of usefulness. This education must naturally include a very thorough course in the theory of accounts, the principle of commercial transactions, and a knowledge of commercial law. This is the training for which your school is organised, and from my knowledge of some of its pupils I am satisfied it is supplying. Therefore I take it that the first of my important requirements is being attended to by you.

However, the days of school training soon come to an end, and then you approach the important epoch for which all that has gone before was merely preparatory; that is, your entrance into business life with all its chances of success or failure. Much will depend on the training and education to which we have referred, but much more will depend on other qualities and requirements, many of which are personal and without which no success—either with or without education and training—can be attained.

We will assume the student has been devoted to his studies, and in every way endeavoured to profit by his opportunities, and that he has determined upon entering the field of public accountancy. This determination should not be reached until it is fully established that he has a particular inclination for mathematics and accountancy in general, and possesses an analytical turn of mind; and also that he has unusual patience, perseverance, and self-control. Without this partiality for accounts, and the gift or quality of analysis, the student can hardly obtain any success worth mentioning in a profession which requires of its devotees the patience and perseverance requisite to make the unusually successful doctor of medicine or the lawyer who attains special prominence in his profession.

Possibly the student may leave his studies feeling that all he now requires is opportunity, and great results are sure to follow. This may be true, but rarely can it be so without a further course of study or apprenticeship where his theories may be put to the test of actual experience. This experience unquestionably can best be obtained in

the office of a practising accountant, and preferably in an office having a variety in the business of its clients rather than one devoted to some special line or lines. Theory is necessary to every important class of work or study, but the practical necessities of varying situations call for special treatment; and therefore, while we must study the theory of accounts as laid down by the best teachers, yet we must be prepared for situations arising for which our theories apparently make no provision. Therefore, my advice to the budding accountant is to keep his theories and methods clearly in mind, but to be prepared to add much to his knowledge from contact with actual conditions as they confront him. If he is fortunate enough to come in touch with men of long practical experience, let him be prepared, while insisting on knowing the reason, to defer to their superior judgment, and with each new piece of work he will add practice to theory, and thus finally be able to reconcile the one with the other. He must not be impatient to be intrusted with the personal care of business, but rather prepared to begin at the foot of the ladder and climb step by step to the top. His education and training should assist him to make the ascent safely and quickly; but if he is not prepared to subject himself to this necessary training, which only experience can give, I fear he is not possessed of the patience necessary to learn how to obey, without which he will never know how to command. There is "always room at the top," but it is safer and surer to climb the stairs than to attempt entrance from the window or through the chimney.

Accountancy has unquestionably held sway since man learned how to barter and sell. The manner of keeping accounts has progressed as man's general knowledge of values and love of possession increased, but there never was a time when greater attention was given to it than at present. This demand for improved methods of accountancy made place for the original public or expert accountant. It has grown nowhere more rapidly than in our own country, and nowhere else are the opportunities for the right men so alluring or show greater signs of increasing. It has spread and enlarged its scope so that now the accountant not only devises plans of accounting and trains the bookkeeper in the proper use of his suggested plans, but he is called upon to prepare the figures upon which the reorganisation of enterprises of any magnitude are based, and to show the financial results likely to follow certain given combinations and conditions.

He is also required to prepare financial statements for his clients with a view to seeking bank credits; advise the business man not only as to his finances, but indeed in almost every particular of his transactions; to act as auditor and critic of disbursements, aid the lawyer in the preparation of many of his cases, and, in short, to bring his general knowledge of business conditions and require-

ments into play in a thousand ways undreamed of a generation ago.

In short, the properly qualified accountant of the present day must be not only well grounded in the theory and practice of up-to-date accountancy methods, and the elucidation of business conditions as expressed in figures, but he must also be possessed of such knowledge of business requirements as to enable him to be of expert assistance to the merchant or financier in deciding many questions remote from mere accounts or profit and loss results.

He must be able to analyse a financial statement with such ability and judgment as to assist the banker in granting credits, or to advise the intending investor as to the desirability of projects offered for investment.

He must also have sufficient knowledge of commercial law and legal requirements to enable him to be of assistance to the lawyer in the preparation of his cases when accounts are involved.

In short, he is called upon to have qualifications of a character more varied, perhaps, than those required of any other class of professional or business man.

As I have said heretofore, education and theory in accountancy are absolutely essential to the ambitious public accountant; but no school or schools can give the student all the essentials to the foregoing, and my advice to you is to study hard and acquire all you can during your student days and be prepared to add to your knowledge by experience when you finally strike out into the active field. No accountant can possibly possess all the highest essentials to a successful career in his profession until after years of varied and hard-earned experience. One of the gravest dangers to the aspirant is his sometime belief that he "knows it all" when through his college or school course, and I therefore beg again to lay particular stress on the necessity for patience and the curbing of ambition to reach the top of the ladder in actual practice by any but slow and sure methods. Rather let the beginner give evidence of a willingness to learn from the experience of those in advance of him, and give close application to each new class of work that presents itself.

So far we have somewhat confined ourselves to a study of the effects and results of general education, theory of accounts, and practical experience, but to attain unusual or more than ordinary success, however, there are several other qualifications which are somewhat apart from said qualities, and yet are at least equally essential.

The accountant must have "the courage of his convictions" to a marked degree. By this I mean he must be prepared to show his findings irrespective of the effect on his personal fortunes. He should be patient and careful in reaching his conclusions, and once satisfied that he

understands the situation presented, and that his statement properly shows the condition, he must be prepared to present it regardless of the selfish wishes of any interested individual or set of individuals.

To present a statement not fully borne out by his examination, or so coloured as to improperly show a condition is dishonest and cowardly, and, even from the lowest and most sordid point of view, would only result in showing his clients a weakness in his moral character which would necessarily lessen their opinion of his general qualifications, and eventually result in his loss of the connection.

His methods must be thorough. A grave danger lies along the lines of slighting parts of the accountant's work. Naturally much depends upon the nature and purpose of the examination. It must first be determined what steps are required to accomplish the purpose in view, and, once determined, every step should be carefully and fully taken. Occasions will arise when haste is most essential, and only good judgment and experience can then determine what should and what should not be examined. The accountant must, however, feel his responsibility, and should permit nothing to interfere with his preparation of a statement truthfully and fully setting forth the subject under investigation. He should not undertake the work rather than to attempt it without sufficient time and materials to produce a showing that is correct and which he can substantiate. If an occasional client is lost by the accountant's insistence on these necessities, more will be gained by the reputation earned for careful and conscientious work; and, besides, the accountant will have the satisfaction which always follows a good action well done.

An accountant is frequently called upon to prepare statements showing the financial condition of individuals, firms, and corporations. This may be for the purpose of procuring credit with financial institutions, for promoting a bond or stock issue, or for any other of the various purposes for which such statements are intended. This form of service is entirely different from making an audit, introducing a cost system, or other classes of work for which the accountant is ordinarily qualified, for here his services are intended not only to cover the wants of his client, but are also of interest to outsiders—affecting, perhaps, the general public. Under these conditions the accountant should not permit himself to occupy the position of "special pleader," and must not attach his certificate to any statement which does not clearly, fully, and truthfully set forth the conditions as shown by the accounts examined. When the general public, or those acquainted with the accountant, are satisfied that they can accept as truth any statement bearing his certificate, he has travelled far on the road to personal success of the most satisfactory character, and has done a large share of his duty to his fellow-practitioners and the public at large.

I do not wish to be understood to mean that the accountant should be a quibbler over mere terms or forms, or that he should insist on his views, irrespective of those of his clients, as to small or minor matters, but rather that as to essentials he shall fully investigate, weigh carefully, and upon reaching a determination insist upon showing his results truly even to the extent, if necessary, of severing connection with his clients. He should determine that no certificate of his shall be attached to a statement unless it be clear, ample, and truthful.

The traits necessary to carry out the foregoing policy are courage and honesty, and without them, while the accountant may obtain success after a fashion, and even make money, he will never attain that degree of success which is followed by the respect of his fellows and his clients, and without which any success will eventually be like Dead Sea fruit, unproductive of any lasting satisfaction, and lacking in that quality which most great writers agree in declaring as a primary purpose of man's existence, namely, to leave the world better than he found it.

#### *Methods of Accountancy.*

Much of the accountant's life will be devoted to the question of methods and forms of accounts; to the requirements of various classes of industries, and the application of his knowledge and experience to their improvement. As to this phase of the situation, my advice is to be always open to suggestion, and expect every day to add something to your knowledge and attainments. Accountancy, like almost every other line of human endeavour, has been a matter of evolution: one man imitating another, while possibly adding something from his own experience or ingenuity, thus confirming the oft-repeated phrase that "imitation is the sincerest form of flattery."

Probably the majority of men who are engaged in active business attend to their duties without ever having developed the faculty of "thinking for themselves," and go on attending to their duties with little or no investigation of the reasons for the rules or methods used by them. To the aspiring accountant, nothing could be more fatal than this tendency. Cultivate the faculty of thinking and wanting to know the reason why. Be satisfied with nothing less than a complete understanding of a condition in which you are interested, imitate the good features, throw over the worthless, but always think out the situation and determine on a complete mastery of it.

When Sir Walter Scott said "the proper education for a young man is to learn to fish and tell the truth," he must certainly have had in mind the young man qualifying himself for the life of a public accountant, as fishing begets a knowledge of patience, which quality is most necessary to the accountant, while without truth he would be like the play of "Hamlet" minus the melancholy Dane.

Unpleasant periods in the accountant's practice are the occasions when his duties unearth dishonesty and wrongdoing. These occasions are frequent enough, and yet, when compared with the number of occasions when he finds conditions satisfactory, and faithful attention to duty a striking feature of the bookkeeper's daily routine, he will be glad to bear testimony to the statement that most men are honest, and the dishonest are the exceptions. This has been my experience during many years of practice. We must not forget that it is the unusual thing that attracts attention; hence stories of dishonesty and wrongdoing reach the press and public when mere honesty and truth, which are so usual, attract or receive little notice. The accountant must be fearless in the exposure of wrong conditions when found by him, but should always be prepared to offer suggestions which will remedy the situation and make recurrence less likely. He must avoid sensational methods and aim at "building up" rather than "pulling down." Wrong and dishonest methods have existed from man's beginning, exist now, and will continue to exist—let us hope in constantly diminishing volume—but our country, its people, and methods are all right, and constantly improving, and the accountant should aim to do his share in helping along the improvement.

Something descriptive of procrastination would be fitting as explaining many of the failures through lost opportunities and wasted possibilities. To-day nothing is more important than promptness and punctual methods. At no time in the world's progress was time so highly appreciated, and nowhere is it more so than in our own country. Shiftlessness and procrastination are productive of failure in either the business or professional man, and no one can survive a reputation for these defects. Late hours and enjoyments at the expense of necessary rest and sleep are productive of this condition, and the man seeking success in any line must be prepared to use self-sacrifice and self-denial by foregoing the forms of amusements or dissipation which interfere with his prompt attendance on his duties—and in the best possible mental and physical condition. Temperance in all things and a proper amount of sleep are essential to good health and success.

The accountant should generally occupy the position of chronicler rather than that of Judge or counsel. He should confine himself so nearly as possible to a plain statement of facts as revealed by his examination, and, above all, he should never permit anger, hatred, or other personal feelings to influence him in the preparation of his reports. It is a fairly well-grounded principle that if a man is inconsiderate in trifles and seeks only that which is advantageous to himself to the prejudice of the rights of others, he is certain to be lacking in the sense of justice and fair dealing, and cannot therefore attain success of the more lasting and higher character.

At the present time much stress is laid by numerous writers on the necessity and advantage of recreation and exercise. The position of some of them in this regard would lead one almost to the conclusion that work was dangerous, and that short working hours and long resting spells were absolutely essential to man's health and happiness. Personally, I have no objection to this formula, and have no doubt every one is the better for an occasional holiday, or, if you will, frequent trips for recreation and change of scene and action. My experience and reading, however, have fully convinced me that anyone desirous of success out of the ordinary must be prepared to bid for it by hard work and constant endeavour. I have yet to find any "royal road to success" worth having, and am inclined to advise the young man to expect hard work, and plenty of it, with little time for holidays or exercise fads until he has achieved his purpose. He will find that work, unaccompanied by worry, will do him no harm, and in most instances the exercise necessary to attendance upon his duties will be all the exercise he will require. It is said that "all work and no play makes Jack a dull boy," but I have also found many "dull boys" who were dull because of too much play and too little work.

Even when everything apparently possible is properly attended to, man at times fails at first to achieve his purpose, and instead of success his efforts are apparently futile, and he meets adversity. If possessed of the necessary courage, perseverance, and determination, this will mean only a temporary defeat, and the efforts necessary to change this defeat into success will be of incalculable benefit to him mentally, morally, and physically, and his final triumph will therefore be of a higher and more lasting character. To the true type of man nothing is of greater benefit than adversity met in the right spirit and overcome by the exercise of the above-mentioned qualities. As the iron ore is purified and improved by fire, so the true man is benefited by adversity.

To me it seems quite impossible for a man to succeed in any industry or occupation for which he has no particular liking or no special aptitude. This is particularly true as to the profession of accountancy, due to the necessity for close application and great patience. If, in addition to a certain amount of liking for the duties of his profession, one brings a quantity of enthusiasm to bear on the situation, it will at once take on an improved appearance. Enthusiasm is not only useful because it makes labour easy and helps the seeker after an opportunity, but also because it is contagious and helps to make others join their efforts. Enthusiasm cannot exist in one not possessed of vitality, good health, and strength, and should be carefully cultivated.

As I stated in the beginning, success of a certain character may be attained without all of the foregoing

qualities. Success may even be apparently achieved without honesty and truth, but success of the real and best quality can be attained only by him who is prepared to think, work, and treat his fellow-men honestly. Notwithstanding all we read about the supposed worship of money by men of the present day, all of our great thinkers, including financially successful men, as well as students of human history and effort, agree that the mere acquisition of money is not productive of real happiness, and, therefore, is not the true measure of success, and, it follows, should not be the sole aim of the ambitious climber. Money is necessary, and must be worked for. "The labourer is worthy of his hire," and, needless to say, I believe each one is entitled to all his efforts can produce, but I plead against making money the sole test of success. Few of the world's greatest benefactors realised great financial gains by their achievements, and many of them frequently knew actual want, yet who would declare them unsuccessful?

Summing up my argument, it will be found that, according to my method of reasoning, "the essential qualifications for the public accountant" are self-denial, courage, perseverance, honesty, and enthusiasm, together with the necessary education, theoretical and practical, a measure of special liking for the duties, and certain special qualities of mind necessary to the character of work involved, coupled with long experience and close application.

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## Economic Aspects of Accounting and Auditing.

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By F. W. LAFRENTZ, C.P.A.

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(From *The Journal of Accountancy*, N.Y.)

ALTHOUGH the United States Courts have held that accountancy is not a profession and that the accountant is subject to the alien labour laws, there are those engaged in the work who look upon their avocation as a profession, and who contribute much time in an endeavour to put the calling upon a higher plane. A great deal has indeed been accomplished in that direction within the last decade, and the public accountant is gradually emerging from that condition which brought upon him the odious appellation of "bookkeeper out of a job."

It must be admitted, however, that only of late years has there been anything like an attempt to place some restriction upon the persons engaged in public accountancy, and that, before this was done, everyone appeared to be free to enter upon that class of work, whether he had the necessary training or not. The consequence was that under the

guise of accountancy many sins were committed, and it was but natural that business men should look down upon the class as a whole as unworthy of confidence and their statements of little value. Now, many States of the Union have passed appropriate laws under which the accountants may qualify and obtain certificates from proper governing boards designated by the legislatures, which permit them to adopt certain designations, such as "certified public accountant," or others of similar import, and which prohibit those who have no such certificate to designate themselves as such.

Of course, the profession is still in its infancy in this country, and it will require much patient labour on the part of those who are striving to perfect proper codes for the guidance of accountants so as to surround the business community with proper safeguards to prevent imposition on the part of the people who may endeavour to pose as qualified to advise and guide men of affairs, to invent and perfect systems of accounting, to instruct the clerical help in offices to properly record the routine transactions and bring them to a focus, and to audit and criticise the accounts and the results shown thereby. Many steps are being taken in the right direction, however; a number of the universities of the land have inserted accountancy in their curriculum among the professional studies—which means that those who enrol themselves for the purpose of becoming learned in the profession are not only taught the art of account-keeping, but in connection therewith matters intimately connected with this branch of applied mathematics—such as law and economics; for it must be apparent to every one who gives the matter thought that to be properly qualified as an accountant—that is, to be able to act in an advisory capacity to the business man, to the lawyer, to the banker, to officers of states and municipalities—a person must have more than a mere knowledge of mathematics; he must have a wide knowledge of business affairs in general, of the economic principles underlying commerce and finance; he must know sufficient commercial law, at least, to intelligently comprehend what is wanted in cases where accounts are under investigation or presented for adjudication. It follows, therefore, that the study of accountancy in the higher schools will enable the coming generation to more fully meet the requirements which, as time goes by, will be more exacting, inasmuch as more will be entrusted to the accountant—more will be expected of him—than the present generation, which had to get its knowledge in the school of practical experience, having no means to get a foundation for the wide knowledge required in the profession, the only schools teaching the art of bookkeeping being the business schools, which, as we all know, are below the standard hereinbefore set out—in fact, they are merely preparatory, so to speak, to fit the youths of the land for ordinary office duties.

Accountancy, to my mind, is not only applied mathematics, but also applied economics. The accountant must know the theory of value in order to properly understand his profession; and here is where he must consult the economist. He should guard against becoming a theorist pure and simple, however. It is necessary for him to be practical in the application of theory. He must know, for instance, when to stop in his analytical work, so as not to burden a business with detail that it is unable to carry. In other words, he must learn to adapt system to business and not business to system. Many theories, as we all know, are excellent when hypothetical questions are concerned, but when they are put into practice they are too cumbersome and unbendable, and, therefore, fall beside the mark.

Now, the accountant, while he, as a rule, understands the art of bookkeeping, is more than bookkeeper. He is the person who is employed to study business problems and to suggest proper methods of recording business transactions and to record them in a manner which will show with the least possible minutia the trend of business, the results of business, the status of business. When his work in that direction is finished, it falls to the lot of the bookkeeper to carry on the work of recording transactions that are entered into from time to time in the manner prescribed by the accountant, who thus becomes his instructor; and at stated intervals thereafter the accountant should be summoned for the purpose of criticising the work of the account-keeper; for the purpose of setting up the results of the business transactions for a given period; for the purpose of ascertaining the status of the business. And when he acts in that capacity he performs the duties of an auditor.

The documents in which the accountant sums up or epitomises the transactions recorded for any given undertaking are the Balance Sheet and the Profit and Loss Account. The Balance Sheet shows, on the one hand, the goods that are owned by the business, and commonly described as assets. Now, the setting up of the assets in the Balance Sheet means merely the making of an inventory of the things owned; but in order to do that the accountant must set a value upon them. Here is where the knowledge of the accountant is put to the severest test, for it means not only the valuation of commodities of readily ascertainable value, such as cotton, iron, timber, wool, grain—for it is not difficult to consult market reports of these staples; indeed, knowledge as to these is available to the humblest now; so much so that even the growers of cotton and grain obtain daily advices as to them, and endeavour to shape their affairs accordingly—but he must know how to deal with the difficult problems of used machinery, dilapidated buildings, and that most elusive of all assets, goodwill.

On the credit side of the Balance Sheet he will set up the debts for which the goods owned are under lien, so to speak, and which, in case of liquidation, must be deducted from the results gained in the disposition of the goods. If the goods are more than sufficient to meet these liens, the residue will be the net worth of the proprietor—the capital of the proprietor. The Balance Sheet, therefore, states the condition of wealth.

The net worth of the proprietor at a given time, when compared with his net worth at a different date, will show the increase or decrease in his wealth—or his profit or loss during the interim—and the reasons for such change will be found in the Profit and Loss Account, for it states the flow of wealth during a given period. That is to say, transactions are entered into by the proprietor at a certain cost, and the difference between the wealth that comes to him and the cost of production of that wealth, is his profit or loss, as the case may be. It is usual for this account to be sub-divided in accordance with the nature of the business. Ordinarily the gross profit is shown in a trading account, which really is part of the Profit and Loss Account, however. This Trading Account shows, on the one hand, the turnover or sales, less trade discounts and returns; on the other, the cost of goods less trade discounts, the selling expenses and cash discounts on sales; the remainder is the gross profit, which is brought forward to the second section of the Profit and Loss Account. Here are added any items of income not connected with sales nor derived from capital. Charges against the total thus ascertained are Rents, Taxes, Management Expenses, Losses by reason of bad debts, Depreciation; the remainder is carried forward to the third section of the account as a balance, which indicates either a profit or loss from the ordinary business transactions. In this third section are exhibited in addition thereto income from capital, such as Revenue from investments, Interest earned, Cash Discounts; and, on the reverse side, Expenditure for Interest on Loans. The remainder would indicate the net profit or loss of the business, and, as such, is carried into a fourth division of the account, which shows, in addition to interest on capital, the disposition of the profit or loss after such charge of interest on capital.

It will be seen that the facts set forth in the Profit and Loss Account as a whole are—

- (1) The business done—where it is handled by different departments, departmentally.
- (2) The cost of the sales—on the same basis as the foregoing.
- (3) The gross profits departmentally, and as a whole.
- (4) Management expenses, which would not vary greatly with the value of business.

- (5) Profit or loss—on the theory that sufficient capital is invested in the business.
- (6) The net result, profit or loss, after all allowances.

Here, then, we find mathematics and economics going hand in hand in aid of the accountant; for in the theories on which he bases his mathematical conclusions we recognise the theories of the science of economics. The themes of the economist—such as Capital, Profit, Income, Expenditure, Value, Property, Labour—are the terms employed here. The forecasts of the economist, based upon economic principles, are, by the accountant, brought into contrast with the actual results attained. These results ought to be studied by the economist, it seems to me, so that he may keep abreast of the times, because the factors in the production and distribution of wealth change, and calculations based upon ancient conditions must necessarily be modified to meet the present. The proprietor or manager of a business engages accountants for the purpose of obtaining an independent *résumé* of his business—a *résumé* based upon logical and scientific principles—deductions made from results shown. In other words, he is not content with knowing the results; he must know the reasons therefor if he would forge ahead. He must be prepared to adjust his affairs from time to time to meet contingencies. The more reliable his records are, and the more comprehensive, the more readily is he in position to determine the proper course to pursue.

He seeks the aid of the professional accountant for the purpose of arranging for him a proper system of accounts, an adequate system, one that will expand automatically as his business expands; not one that will need constant additions. The fact is, his business has grown rapidly, and his accounting methods have been neglected and have not been looked after as closely as has the making of the business. This is natural; it is always thus. Few men realise the value of accounts until something out of the ordinary takes place, a defalcation, a lack of ready assets in the face of a large turnover. When information is desired as to reasons for such conditions, they cannot be ascertained without great cost, and, above all, without much anxious waiting. After all, it is the business man who is able to have laid before him his accounts, in such detail as may be desirable, who is in position to grapple with changes in condition to advantage. Some concerns appear to succeed not because of good business practices, but notwithstanding the fact that they are loosely conducted; but the majority of failures are attributable to this fact. Furthermore, while defalcations take place in institutions that are conducted in accordance with modern methods, the great majority of cases occur where laxity is the rule.

The accountant has become a necessity to the business man in every walk of life. The growth of commerce, the great strides that have been made forward in every direction, have brought him to the fore as never before. He is needed in the production and distribution of wealth. Take the production of wealth. The economic writers tell us that all wealth is drawn from the earth; and mankind for ever seeks to extract wealth in one form or another. The incentive in every instance is gain. Man unceasingly seeks to supply something to himself and for the purpose of exchange with his neighbour for that which the neighbour possesses and he desires. Before commerce became what it is to-day—that is, before the invention of swiftly-moving carriers—the individual produced only when it was necessary for him to consume, and he was, therefore, engaged only part of the time. Man in his original state went hunting only when he was hungry, and, having been successful in procuring game, rested and consumed that game before he would undertake another expedition. The farmer aimed to produce from the soil sustenance and clothing for himself and his family. But in order that these individuals might bring from the earth the things desired, it was necessary to have implements, and these were made for them by those who delighted in making such articles, and who became skilled in the art of manufacture. Some one commodity was exchanged for another. This condition led finally to a standard of value which sometimes meant cattle, hides, or other products which were difficult of handling; and man hit upon the idea of using precious metals, which were more or less rare and were readily transported. These metals were handled in the shape of bullion for a long time, and then the State undertook to cast pieces of metal into forms of certain weight and fineness and the stamp of the State was a guaranty thereof. The treatment of values in money enables the accountant to apply to the analysis the rules of arithmetic, because values, when they become prices, become arithmetical quantities.

Money, however, although it is used by the accountant as a means of comparing values, has in a way become less active because of the system of credits which has been invented by experience, and which now takes the place of money in trades. Indeed, it would be impossible for business to be carried on without credit. And here is where the accountant is required to use his skill to adjust the transactions in the business world. How would it be possible for those engaged in the production of wealth to make progress without a proper system of accounts to guide them? If they are manufacturers, their principal concern is, necessarily, the cost of production; if mining, the cost of extraction and transportation. Then, in the distribution of wealth and exchange, consider the intricate net-work of transactions of railway and other systems of transporta-

tion; the interchange of freight; the prepayment, in some cases, of the cost of transportation of goods that are sent over the lines, not only of the carrier accepting the goods as freight, but of connecting lines; the distribution of the charge made for such transportation; the keeping track of cars that are run from one centre to another over lines owned by different carriers, and which must be kept count of for the purpose of crediting the owner with mileage. Consider the transactions of banks between themselves and with the public, cheques or drafts taking the place of money, and the whole making a gigantic system of credit. What order must here be kept in connection with these various transactions; for if anything goes wrong in any direction, the whole machinery is thrown out of gear.

In every direction, then, the services of the accountant are needed. The field of his activity is practically unlimited. Imagine, if you please, the work there is in connection with the proper systematising of Cost Accounts—the keynote of the manufacturing situation. Every day clients are made by former ones whose affairs have been put in satisfactory order.

Commerce is growing daily, and in proportion to its growth the accountant must move forward to meet the new conditions. It goes without saying that as time goes by his functions will become more and more important to the community at large, and greater responsibility will be thrust upon him in the course of events. He must place himself in position to meet these contingencies when they arise. He must fit himself to be in position to render proper service.

Honour and integrity are the keynotes to the situation, however; and common sense must be one of the constituent parts of the make-up of the accountant who would rank above the average. There must be found a medium between theory and practice; too much of either is bad.

Let the man of business look well before he entrusts his affairs to anyone for the purpose of investigating or systematising lest he be dissatisfied with the attained results. Let the accountant look to it that he uphold the dignity of the profession by rendering proper service in every instance. And, in conclusion, allow me to say that, above all, the accountant should be, like Cæsar's wife, above suspicion.

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## Meetings for the ensuing Week.

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**Tuesday, Wednesday, and Thursday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—Preliminary Examination. First two days, 10.30-1, 2-4, and 4.30-6. Last day, 11-1, and 2-4.

## Poor Law Scandals and the Audit Farce.

By AN EX-POOR-LAW ACCOUNTANT.

(From *The Eastern Post and City Chronicle*.)

IN these days of scandals as to supplies to institutions, and also as to contracts, and payments in respect thereof, what strikes the man in the street is, how it is possible for these things to exist years before discovery? To the man behind the scenes it is quite simple. The Guardians, like the public, think that, when the Government auditor has examined and passed accounts, everything is in order, but they are living in a fool's paradise. Take the type of average Government auditor first. It would be thought that this official was a trained accountant, either by qualification as a Chartered Accountant, or by years' experience as an accountant clerk to a local authority. Not a bit of it! The only qualification necessary is to be a needy and importunate relative of some high official of the Local Government Board. One auditor used to be very candid as to his ignorance of the work. The first time he came down from Whitehall he said to the officer whose books he was examining, "I am fresh to this work, and should be glad if you would show me how this statement is balanced." This auditor drank so much (sometimes at the expense of the officers) that at last one official, bolder than the rest, exposed the farce, and this mock auditor was gently removed from office. So much for the heads of the audit staffs. Now, take the assistants. They are not engaged by the Local Government Board, and have no status. The auditor is allowed to do a little sweating on his own, and he usually engages at very low wages some poor failure in other walks of life, who is willing to act as flunkey to his august chief. What the auditor lacks in qualifications, however, he usually makes up for in bombastic behaviour. One of his favourite antics is to throw an officer's books on to the floor at his feet, so that the official in picking them up should realise the vast social gulf between him and this mighty man of figures. These West End club loungers usually fix the time of audit at 10 a.m., but they seldom appear until between 11 and 12, and depart about 3 p.m. Their clerks, however, are to time. Their procedure is—

- (1) To look at the total of every bill with the banker's Pass Book and tick it off.
- (2) To look at every invoice, and see that the total agrees with the Day Book.
- (3) To look at the payments of officers to the banker, and see that the Pass or Treasurer's Book agrees.



They do not examine the tradesmen's contracts for supplies, with the prices charged, nor do they see that tenders are accepted *bond fide*.

They do not check the calculations as to goods ordered and prices charged.

They do not check all orders of the guardians for provisions and supplies with the delivery notes.

They do not add up the totals of each page of the Ledger.

They do not add up and check the books of wages paid to temporary servants, and mechanics employed by the hour, day, or week.

In fact, the Government auditor never stoops to such low-class work as casting up totals, nor do his hirelings, except in the case of the Financial Statement and the Metropolitan Common Poor Fund. Honest and efficient officials feel that the present method of examination of their half-year's work in a few hours by incompetent officials is most unsatisfactory; not so with the contractor's friends, and, alas! there are too many. The existing happy-go-lucky audit enables them to continue working with the contractor, and to fleece the ratepayers in other ways. They desire nothing better. It was thought that with the advent of the Right Hon. John Burns a change would be effected, and that experienced men would take the place of incompetents, but it is feared there will have to be many more scandals before the public rise up and demand a proper overhauling of the expenditure of rates drawn, in many cases, from them like blood-money.

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### Personal.

MESSRS. FUTCHER, HEAD & CO., Chartered Accountants, announce that they have removed to Mildmay Chambers, 82 Bishopsgate Street Within. E.C.

It is announced that the partnership heretofore existing between Mr. FREDERICK ARTHUR PARNABY and Mr. JOSEPH DARBY GARSIDE in the profession of Chartered Accountants, carried on by them at 46 Gresham Street, London, under the style or firm of PARNABY & GARSIDE, has been dissolved as from the 30th day of April 1906 by mutual consent. The business will in future be carried on by Mr. F. A. PARNABY in his own name at 46 Gresham Street, and Mr. J. D. GARSIDE will in future carry on business in his own name at 27 Quarry Hill Road, Tonbridge.

MR. JOHN HY. WATLING, Chartered Accountant, of 40 Broad Street, Bristol, announces that both Mr. JOHN JAMES PARKER, A.C.A., who has been his managing clerk for some years, and Mr. HERBERT SAYER THYNNE, A.C.A., who was articled to him, are now associated with him in practice. The style of the firm will be WATLING, PARKER & THYNNE.

MR. E. G. SACKETT, Chartered Accountant, of 1 Middle Pavement, Nottingham, announces that he has taken his son GORDON SACKETT into partnership, and that in future the business will be conducted under the title of E. G. SACKETT & SON.

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## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, June 1st, was 181, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 101; Deeds of Arrangement registered, 80. The respective numbers in the corresponding week of last year were: Bankruptcies, 84; Deeds of Arrangement, 79—total, 163, being an increase of 18. The total number of commercial failures recorded during the 22 weeks of the present year is 3,725; the total number recorded in the corresponding 22 weeks of last year was 3,954, showing a decrease of 229.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, June 1st, was 178. The number in the corresponding week of last year was 179, showing a decrease of 1. The total number filed during the 22 weeks of the present year is 3,360; the total number filed in the corresponding 22 weeks of last year was 3,729, showing a decrease of 369.

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### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, June 1st, amounted to £1,298,317, by way of addition to £1,739,093, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,647,933, showing a decrease of £349,616. The total amount registered during the 22 weeks of the present year was £37,586,629 (in addition to the issues in previous years by the same companies), as compared with £32,663,509 for the corresponding 22 weeks in 1905, showing an increase of £4,923,120.

## The Profession in Scotland.

### Personal.

Messrs. Mackay, Irons & Co., C.A., have removed from 13 Albert Square to 22 Meadowside, Dundee.

### Society of Chartered Accountants in Edinburgh.

There has been hung in the hall of the Society at 27 Queen Street a portrait of the President, Mr. F. W. Carter, painted by Sir George Reid, late President of the Royal Scottish Academy. Mr. Carter was asked by the Society to sit for his portrait in recognition of the admirable manner in which he discharged the duties of President, more particularly at the time of the jubilee of the Society's incorporation. A replica of the portrait is to be presented to Mrs. Carter, but this has yet to be painted. The portrait is generally regarded as an admirable piece of work and an excellent likeness.

## COURT OF SESSION.

### Edinburgh—Outer House.

#### Before Lord Salvesen.

May 31.

#### R. Reid (G. Stewart's Trustee) v. A. Stewart.

*Sequestration—Ex facie Absolute Dispositions in Security of Advances—Trustees' Action for Reduction.*

The late Gavin Stewart, who died on 7th September 1904, was a builder in Glasgow, and was the owner of heritable subjects in Valleyfield Street and Flemington Street, Springburn, Glasgow. He left a trust disposition and settlement under which he nominated certain trustees, including the defender of this action, Archibald Stewart, builder, 136 Hope Street, Glasgow, who was his brother. These trustees continued to act until 4th March 1905, when they presented a petition for the appointment of a judicial factor and for leave to resign. Following on this petition, the pursuer here, Robert Reid, C.A., Glasgow, was appointed judicial factor. His appointment was superseded by the sequestration of the estate on 17th May, but as the pursuer was confirmed trustee on 5th June there was no change in the management. Although the pursuer sued as trustee in the sequestration, it was as representing the deceased Gavin Stewart, and as vested in the property belonging to him that he maintained his right to decree.

The leading conclusion was one for declarator that certain tenements belonged to Gavin Stewart at his death, but the real object of the action was to deprive the defender of the benefit of two *ex facie* absolute dispositions which he held of the subjects in question, and which were recorded in his favour on 23rd September 1904. The pursuer maintained that the recording of these writs by the defender was unwarrantable and illegal; and he accordingly sought reduction of the dispositions themselves and of the warrants of registration as well as of the back-letter executed by the defender in the pursuer's own favour while he was administering the estate as judicial factor. If the pursuer were successful, the late Gavin Stewart would stand on record as the owner of the property unburdened by any security title in favour of the defender. In the end of July 1904 Gavin Stewart was in urgent need of financial assistance, and he applied to the defender for a loan of £2,000. This loan the defender agreed to give by discounting bills to that extent, provided he obtained a security over the subjects, to take the form of an absolute disposition of the subjects, and the defender undertook to grant a back-letter agreeing to reconvey the subjects on his advances being repaid.

Lord Salvesen assolized the defender from the conclusions of the action, and found him entitled to expenses. His Lordship said he reached the conclusion (1) that the defender became entitled to delivery of the *ex facie* absolute dispositions on making the advance of £1,000 on 19th August, subject only to his acknowledging, as he was always willing to do, the trust which was thereby constituted in him *quoad* the reversion; (2) that even assuming the defender was not entitled to record the dispositions on 23rd September, the trustees homologated his actings in the knowledge of the facts, and the pursuer, as coming in their place, was not entitled in this action to challenge what they did; and (3) that the pursuer himself by accepting the back bond expressly recognised the defender's right, and he had not stated any relevant grounds for reducing the transaction which resulted in that writ being executed. On all these grounds his Lordship was of opinion that the defender fell to be assolized. It was worth noting that the pursuer did not propose, as a condition of the reduction which he sought, to make restitution of the £1,000 advanced by the defender (who was prepared to have loaned the £2,000 to Gavin Stewart had he survived and required further advances), and it was obviously not in the interest of the estate that he should do so, as the value of the security fell far short even of that sum. The *bona fides* of the advance could not be questioned, and it would, in his Lordship's opinion, be highly inequitable that the pursuer should be entitled to deprive the defender of his security for this sum, when, but for the promise to give a specific security, it would never have been advanced.

THE CORNHILL MAGAZINE for June contains the customary instalments of "Sir John Constantine," by Mr. A. T. Quiller-Couch, which now reaches its conclusion, and of "Chippinge," by Mr. Stanley J. Weyman. In "An Incursion into Diplomacy" Sir Arthur Conan Doyle tells how he came to write his pamphlet "The War in South Africa: its Cause and Conduct," which was translated into twenty different languages; how it was received, and how the surplus proceeds were disposed of. Short stories are "Marian Bramson: Spinster," by Mr. W. Clinton Ellis, and "The Story of the Princess Gorgona," by Mr. George Young. Mr. David Hannay chooses an appropriate moment to describe the history of "The King's Spanish Regiment"—the "Zamora"—of which King Edward VII. is colonel. The number concludes with an article on "The Birds of London, Past and Present," written by Mr. F. H. Carruthers Gould, and illustrated with drawings from the well-known hand of "F. C. G."

CASSELL'S MAGAZINE for June 1906 contains: "Opera: Past and Present," by Austin Brereton; "Concerning Mr. R. Caton Woodville," by R. de Cordova, with pictures by the artist; "Mr. Max Pemberton," a New Portrait; "The 'Fuzziness' of Hooekla-been," a complete short story, by Jack London; "Signor Caruso," illustrated with photographs and caricature; "Lord Dalmeny as a Cricketer," illustrated with special photographs; "Mr. Soper's New Sister," a complete story, by Tom Gallon, illustrated by Lawson Wood; "The Count's Chauffeur," a series of complete stories, by William Le Queux, "I.—A Move on the 'Forty'"; "Some Impressions of Minto"; "The Vengeance of the Dago," a complete short story, by Edwin Pugh; "To Succeed in Parliament," by Harry Furniss, with illustrations by the author; "Men and Things"; "The Diamond Ship," a new serial story, by Max Pemberton, illustrated by Sydney Seymour Lucas; "The Times"; "Tales by the Way"; "Other People's Humour," &c. &c.

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### Bank Rate of Discount.

Sept. 28th 1905 .. .. .	4%
April 5th 1906 .. .. .	3½%
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VOL. XXXIV.—NEW SERIES.—No. 1645.]

SATURDAY, JUNE 16, 1906.

[PRICE 6d.

Extract from *Auditing*, by LAWRENCE R. DICKSEE, F.C.A.  
(Page 190)

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### Leading Articles.

#### The Future of Articled Clerks.

FOR some few weeks past there has been going on in these columns a desultory discussion, ostensibly on the proposed regulation of the accountancy profession by legislation, but really upon a number of matters of varying interest to those who are concerned in the future of accountancy. We do not propose to add anything to our previously stated views

on the subject of the regulation of the profession, whether by legislation or otherwise, for it seems to us that the matter has long since been sufficiently debated in general terms, and that if anything further is to be done it should be rather in the direction of some definite *action* being taken than in further contributing to the already somewhat voluminous output of wordy discourse. From what transpired at the recent Annual Meeting of the Institute, however, it appears that the subject is at last receiving some definite consideration. Some such assurance must, we assume, have been privately conveyed to Mr. E. D. WHITE, F.C.A., when he was induced to withdraw the motion of which he had given due notice. We prefer, therefore, to await the formulation of some definite scheme before devoting further time to its consideration.

In the meanwhile, two other issues have been raised by our various correspondents, both of considerable importance, and both of which should, we think, be very generally and carefully considered, so that they may, to such an extent as may seem necessary, be dealt with simultaneously.

The first of these points was raised by our correspondent "Scottice," in his letter which appeared in our issue of the 12th ult., when he pointed out the desirability of the Joint Committee of the Chartered Societies limiting the number of apprentices Scottish practitioners should be entitled to take. The number of apprentices at the present time in Scotland, he stated, discounts all the requirements of the profession for several years, even allowing for the annual overflow to England. From the point of view of the Scottish apprentices there is doubtless something to be said

against Edinburgh practitioners practically working their businesses with apprentices, and in many cases getting the whole of their office work done by them, as stated by our correspondent "C.A.," in his letter which appeared in our issue of the 26th ult. We question, however, whether the apprentices themselves have really anything to complain of, for they will undoubtedly get a more efficient training in offices where they are expected to work than in offices where they are permitted to idle. The real objection to the absence of all limitations as to the number of apprentices—or articulated pupils, as we prefer to call them in this country—is that the number of persons who, as duly qualified Chartered Accountants, expect to derive a living out of the practice of accountancy would grow far more speedily than the demand for their services if all practitioners were to follow upon the same lines. We imagine that the institution of articles has been designed not merely for the purpose of enabling principals to pocket premiums and to get their clerical work done at a minimum figure, but also, in part at least, with a view to securing the next generation against the competition of incompetent and unscrupulous persons. It must not, of course, be supposed that we are for one moment advocating that the doors of admission to the profession of a Chartered Accountant should be closed in order to put up prices by creating an artificial scarcity of skilled accountants, but we do think that a reasonable limit to the number of articulated pupils that a practitioner is entitled to take at the same time has the salutary effect of discouraging him from taking anyone as an articulated pupil whom he does not consider will eventually become a successful accountant.

We take it, however, that the objection of our correspondents to the absence of all limitation in Scotland is not so much in the interests of the articulated pupils themselves as of the profession in England ; and, undoubtedly, English accountants and accountant students have a reasonable right to their views upon a subject which certainly affects them somewhat seriously. There has for many years past been a steady stream of Chartered Accountants issuing out of Scotland. Some of them go abroad or to the Colonies, and with these we need not concern ourselves, but many of them settle down in this country and at once pose as qualified accountants, whereas, undoubtedly, on their arrival here their claim to be regarded as qualified is quite without justification. The competition of Scottish practitioners, however unfair it may be, is probably the least serious part of the matter. What, it seems to us, is the more serious aspect of this Scottish invasion is its effect upon the position and prospects of those English accountants who are not in practice for themselves. As in many cases the Scottish C.A. is willing for a time at least, while he is learning to make himself competent, to accept a salary in England smaller than that which would be demanded by any Englishman with a similar number of years' experience, he is frequently preferred not only on account of this, but because he is described as a "Chartered Accountant." If English practitioners did not give facilities to enable Scotsmen to learn their business in this country save in the proper and regular way, and if they refused to recognise the Scottish "C.A." as being the equivalent in England to "Chartered Accountant," a very different state of affairs would be speedily brought about. So long,

of course, as Scottish Chartered Accountants are permitted to give articles indiscriminately, the output of C.A.'s will in the nature of things be far greater than is needed in Scotland. The remedy for this state of affairs is, it seems to us, in the nature of a reasonable restriction of the output, so that an increasing proportion of accountant students may in the future be trained in the country where they propose to practise, and may thus become in the course of their regular training qualified in fact, as well as in mere name.

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#### Parliamentary Companies.

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IN our issue of the 12th ult. we reproduced a full report of the lecture delivered by Mr. FRANK NOEL KEEN, LL.B., A.C.A., at a recent meeting of the Chartered Accountant Students' Society of London upon the subject of Parliamentary Companies. Mr. KEEN, who was, it will be remembered, a practising accountant before he became a barrister, is naturally well acquainted with the requirements of accountant students, and he has thus been able to fill a distinct blank in the literature of the profession, and to place before examination candidates and others in a fairly complete and highly interesting form a *résumé* of the principal points relating to the constitution of companies incorporated by special Act of Parliament, and points in which such companies differ from the more common class of companies registered under the Companies Acts.

For the purposes of our present review it is unnecessary for us to follow Mr. KEEN through all the numerous headings under which he treats his subject. Especial interest, however, naturally attaches to the paragraph dealing

with the Depreciation and Reserve Funds, in view of the discussion that has taken place in these columns recently as to the right of a gas company to provide for depreciation otherwise than through the operations of its statutory Reserved Fund and Insurance Fund. Upon this point, however, it must be admitted that the lecturer is somewhat disappointing. He states that it is not usual for a parliamentary company to be placed under any obligation to provide systematically out of Revenue for the depreciation of works and plant in which its capital funds have been sunk. For this reason the Revenue Account has to bear not only the cost of maintaining the works, but also the cost of replacing any parts thereof which may become worn out or otherwise require renewal. He adds, however, that it is usual for parliamentary companies to be empowered, and some such companies are required, to create Reserve Funds, and that special funds for purposes such as depreciation, insurance, or renewal, are sometimes authorised. All this seems to leave us very much where we were before: the question which our correspondents wish to see definitely answered one way or the other is as to whether it is legitimate for a gas company, in addition to, or in substitution for, any contributions that it may make towards its statutory Funds, to charge against Revenue from year to year sums in excess of the actual expenditure upon repairs and maintenance, with a view to creating an additional and Secret Reserve out of which excessive expenditure upon renewals in subsequent years might be met. It will be remembered that the view we expressed at the time was that so long as the Secret Reserve and the statutory Reserve did not altogether exceed the statutory maximum figure, we

thought that this course might be pursued, but not when it had the effect of building up Reserves (of whatever description) in excess of the statutory maximum. At the same time we expressed this view with some hesitation, in that the point has, so far as we are aware, never yet been raised; and we should have been glad if Mr. KEEN could have seen his way to throw some further light upon the matter. It would appear, however, that the subject is so large a one, and involves such exhaustive quotations from Acts of Parliament, that within the limits of time and space available there was practically no opportunity for any very extensive comment.

We observe this particularly in connection with the section devoted to Accounts and Audit, which is practically all quotation, save for a passing reference to the decision in *Steele v. The Sutton Gas Co.* This decision might well, we think, have been further explained. Again, the bare mention of the fact that it is now becoming usual by a clause in the special Act to remove the limitation imposed in Section 102 of the Companies Clauses Consolidation Act, 1845, which required that where no other qualification was prescribed by the special Act every auditor should hold at least one share in the undertaking, hardly exhausts the point. Such a provision was, of course, entirely reasonable at a time when auditors were selected from among the members of the company, and empowered to employ accountants to assist them in the discharge of their duties, but is quite out of date under latter-day conditions.

Another point which, it seems to us, calls for further explanation is the position of affairs when a parliamentary company, under powers granted by its special Act, issues shares or stock at a discount. Lawyers can, of course, hardly

be expected to appreciate the difficulties of an accountant student upon such a point, but for all that they are very real, and centre round the question as to how the discount is to be treated in accounts. With the Single-Account System the discount would probably be shown as the last item upon the right-hand side of the Balance Sheet, if the accounts of such an undertaking were ever framed upon that system; but with the Double-Account System even the quite inexperienced student would probably appreciate the difficulty of stating as an item of capital expenditure in the Capital Account a sum which had never been expended at all. The difficulty is, however, got over by treating the account strictly in the nature of what it is supposed to be, a Cash Account, and therefore upon the Cr. or the Receipts' side the Capital Issued is only stated at the actual amount of money received in respect thereof—that is to say, the net figure—and not at the nominal or face value of the shares or stock issued in exchange. As a result, the total of this side of the account does not represent the total upon which dividends have to be calculated, but neither would it have done, had the capital been issued at a premium, as in that event the premiums would have appeared as Capital Receipts, although, of course, no dividends would be payable thereon. For particulars of the capital issued, upon which dividends must be calculated, reference must in all cases be made to the preliminary statistical statement of issued capital, which invariably precedes the statement of the Capital Account itself.

If Mr. KEEN can see his way upon a subsequent occasion to supplement his paper on Parliamentary Companies by one dealing

with the various questions of account that are peculiar to these undertakings, we feel sure that his effort will be widely appreciated.

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### Weekly Notes.

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#### The "American System of Bookkeeping."

According to a newspaper report of the further proceedings in the *Ogden* bonus case, we notice that Mr. George Nicholson, of the firm of Messrs. Harmood Banner & Co., is said to have stated that he was aware that Ogdens, Lim., had adopted the American system of bookkeeping in 1901. Might we ask Mr. Nicholson, or Mr. S. S. Dawson, who was also called as a witness, to explain what the "American System of Bookkeeping" really is?

#### Standard Oil Appoints a Press Agent.

It seems that the combined weight of public opinion in the States has been too much even for the stolid insularity of the Standard Oil Company, for it is announced that a press agent has been appointed whose duty it will presumably be to educate the masses up to the Oil Standard and to counteract the effects of recent criticism. There may be much virtue in a press agent, and the pen may be very mighty, but the row of the Trust is a long one and will need a strong hoe.

#### Wall Street's Methods of Attracting Business.

The New York correspondent of *The Financial News* points out that the facilities for trading in stocks and shares in that city are much more convenient than apply over here. An express "ticker" service exists between nearly every large commission house and the Exchange, and every change of quotation is recorded on a large frame which covers the entire wall of a room in the broker's offices, and which exhibits the names of all listed and unlisted stocks, together with their highest and lowest prices of the previous day and the latest quotation. In order to appreciate this, it must be remembered that the speculator can walk into the offices of his brokers and can tell at a glance, by casting his eye down the list of highest, lowest, and latest prices on the board, exactly how the market is going. He can then sit down and watch the movements as they take place on the Exchange, and when he thinks



it is time to close his "bear," or "average," or sell "short," according to his interpretation of the fluctuations, he simply scribbles out his instructions and hands the slip of paper over the counter. His order is immediately telephoned over to the firm's representative on the "floor," and two or three minutes later he will see the price at which his order has been executed duly recorded on the ticker and placed upon the board. It certainly seems that the operator can, in America, get in better touch with the actual market movements, and since all official records of each transaction are at his disposal in case of dispute, we suppose we may say this is one of the things they do better in New York.

**International  
Postal  
Arrangements.**

The Postmaster-General has announced that although the British delegates to the recent Postal Congress at Rome failed to obtain a reduction in the initial postal rate of  $2\frac{1}{4}$ d. to foreign countries, they were successful in persuading the Congress to adopt two important concessions which will come into effect next year. The first is as regards the initial weight allowed for foreign letters, which will be increased from half an ounce to one ounce for the existing postage of  $2\frac{1}{4}$ d., while at the same time the weight of letters forwarded to colonies and dependencies of Great Britain under the Imperial Penny Post will also be increased from half an ounce to one ounce. As regards the second part, in future the postage will be an additional  $1\frac{1}{4}$ d. for each additional ounce after the first ounce, instead of  $2\frac{1}{4}$ d. for each additional half ounce after the first. Thus a letter to France weighing not more than two ounces will, upon the revised scale, cost 4d., instead of 10d. as at present, and such a letter forwarded (say) to India will cost only 2d., instead of 4d. These reductions will be greatly appreciated by all who have an extensive foreign correspondence.

**Building Society  
Advances to  
Officials.**

The question raised by our correspondent "A. R." in his letter which appeared in our issue of the 2nd inst. may, we think, be answered by reference to the dictum of Lord Justice Lindley in the course of his judgment in *The London and General Bank* case. "It is no part of an auditor's duty," said his Lordship, "to give advice either to directors or shareholders as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans without

"security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably; it is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of audit, and his duty is confined to that." Unless, therefore, our correspondent has some reasonable ground for believing that the advances to the official in question will result in a bad debt to the society, there would appear to be nothing in the circumstances named that calls for comment upon his part.

**Abortive Company  
—Landlord's Right  
of Distress.**

We replied briefly to the question asked by our correspondent "G. B." in our last issue, but the matter is, we think, perhaps worthy of further consideration. It appears that a landlord has distrained for rent on certain goods the property of a company in liquidation, and our correspondent, relying doubtless on Section 87 of the Companies Act, 1862, inquires whether the landlord is acting within his rights. If the distress had been issued in consequence of the failure of the company to pay rent due by it to the landlord, Section 87 would, of course, have applied, and no distress could have been issued without the leave of the Court. But that section does not override the general rights of a landlord to distrain for rent due upon any goods that he may find on the premises, with certain specified exceptions, of which the property of a company in liquidation is not one. Had the company been the tenant, the position would, as we have said, have been entirely different; but as there has been no assignment of the tenancy to the company, nothing has taken place to interfere with the landlord's rights.

**Accountants  
Instructed by  
Solicitors.**

In a case which came before his Honour Judge Bray in the Birmingham County Court a short time since it was decided that where a firm of solicitors advise their client to employ an accountant to make an investigation, and the client accordingly instructs them to employ an accountant, which they do, the client is liable to pay the accountant's charges, and is not entitled to assume that an agreed sum paid to the solicitors in settlement of their costs will include the amount due to the accountant. This is only reasonable, assuming the normal condition of affairs, that the instructions were given to

the accountant by the solicitors as agents for their client, in which event they would, of course, incur no personal responsibility in the matter. The client has, it seems to us, no right to expect that they would accept any such responsibility, and has, therefore, no reasonable ground for assuming that when he has paid his solicitors' bill he has discharged all the liabilities which he authorised them to incur on his behalf. Of course, however, the difficulty could not have arisen had a detailed bill of costs been rendered, and it occurs to us to suggest that solicitors ought not to accept payment in settlement of their client's bill without at the same time taking some steps to see that the accountant whom they have introduced into the matter is paid. It is, we believe, very usual among solicitors for them, without accepting personal responsibility, to take practical steps to see that any accountants employed by them on behalf of clients are paid their proper charges in due course. This is obviously desirable from the point of view of the accountant, but in view of the decision to which we have just referred it would appear to be also convenient in the interests of the client.

**The Growth of Co-operation.** In connection with the Thirty-seventh Annual Congress of the Co-operative Union, which was held at Birmingham last week, it is of interest to note that whereas in 1870 the returns showed 749 societies in existence having a membership of 249,113, and a share capital of £2,034,261, the present number of societies stands at 1,614, with a total membership of 2,258,060, and a share capital of £29,042,029, irrespective of the loan capital of £8,924,215. During the past 25 years the aggregate sales have increased from £8,202,466 to £94,197,514, and the net profit from £555,435 to £10,458,163, after deducting £1,222,864 charged up as interest upon share capital.

**An Interesting Partnership Dispute.** It is stated that an action has been instituted in the Chancery Division of the High Court by some of the proprietors of parts of shares in *The Times* against Mr. Arthur Walter, the manager of the business. The plaintiffs complain that, while their liability is unlimited, they are allowed no voice in the management of their property, and that they disapprove of the manner in which the business is being conducted. Without, of course, expressing any opinion upon the merits of the

case, concerning which we know nothing, we may mention that it will be of great interest to see what view the Courts take of this interesting, and indeed unique, problem in partnership disputes. It is apparently not alleged that the managing partner has done anything that he is not entitled to do, but the plaintiffs seek to bring about a different condition of affairs merely, apparently, on the ground that they do not approve of the conditions now obtaining. They may under the circumstances be entitled to a dissolution, but it is difficult to see what jurisdiction the Court can have to otherwise interfere, so long as no breach of the existing agreements has been committed.

**Judicial Changes.** It is announced that Lord Justice Stirling has resigned his seat in the Court of Appeal, and that Mr. Justice Farwell has been appointed in his stead. Lord Justice Stirling, who was appointed a Chancery Judge in 1886, and raised to the Court of Appeal in 1900, has delivered probably more decisions of interest to accountants than any other occupant of the Bench, and his loss will undoubtedly be severely felt. Mr. Justice Farwell, who succeeds him, was appointed a Judge in the Chancery Division in October 1899, when the number of Judges was increased owing to the serious block in the business of that division. He was born in 1845, educated at Rugby and Baliol College, Oxford, called to the Bar in 1871, and created a Queen's Counsel and a Bencher of his Inn in 1891. His Lordship is at present occupied as Chairman of the Commission appointed to inquire into the alleged War Stores Scandal, and it is understood that he will not hear cases in the Court of Appeal until that Commission has concluded its labours. In the meanwhile, it is probable that the President of the Probate and Divorce Court will help to complete the Second Division in the Appeal Court.

**The Law's Delays.** The last issue of *The Law Journal* contains a paragraph commenting upon the block of business in the Court of Appeal, pointing out that at the end of the last sittings the Court gave judgment on an appeal from a decision given on the 25th May 1905. Our contemporary expresses the view that what is wanted is an increase of three in the number of Lords Justices, and it points out that then it would be always possible to hold two divisions, even in the absence of one or two Judges

owing to ill-health, while in their spare time, of course, the Judges would be available to help clearing off the arrears in the Courts below. There can be little doubt that so heroic a measure should effect a very material improvement in the existing unsatisfactory position of affairs, but it occurs to us that, upon the whole, a more satisfactory result might be achieved by adopting our contemporary's idea and taking it up a step further. By the appointment of three additional judicial members of the House of Lords, that tribunal, whose business is in at least as unsatisfactory a state as that of the Courts of Appeal, would be very materially strengthened, and the Law Lords might from time to time sit in the Courts of Appeal to fill a vacancy there caused by the indisposition of a Lord Justice. The weakness of the House of Lords, both in numbers and in calibre, has for some time past been strongly marked, and if it were to be reinforced in both these directions, it would be a material advantage all round, achieved possibly at even less expense than that required to carry out the recommendations of our contemporary.

**Brewery Amalgamation.** It is announced that the negotiations for the amalgamation of the undertakings of James Salt & Co., Samuel Allsopp & Sons, and the Burton Brewery are now practically completed. It will, doubtless, be necessary to effect a considerable reduction both of capital and of working expenses before any very satisfactory result can be expected as a consequence of this process of amalgamation, but in any event it is to be hoped that the articles of association of the new company will render compulsory the annual publication of full and proper accounts. The policy of secrecy which has been chiefly characteristic of the brewery limited companies has unquestionably been largely responsible for the sudden and marked fall in market values that has recently taken place.

**Interest on Bank Deposits.** At the recent meeting of the Institute of Bankers in Scotland Sir George Anderson, who presided, stated that whereas a London bank usually had to pay interest on only 20 per cent. of its money, and while in the English provinces the ratio was not more than 40 per cent. or 50 per cent., in Scotland banks had to pay interest on about 80 per cent. of the money lodged with them, and the difference

on the money lent over what the money lodged cost them was only about 1 per cent. This explained why they were unable to increase their rates in order to attract depositors. Scottish people, he said, looked after such small matters more closely than did the English. On the other hand, we should certainly have thought that many Scottish banks must be making a very nice little income out of the charges which they make to English banks for cashing their own cheques.

**Unregistered Money-Lenders.** A somewhat interesting case was decided by Mr. Justice Bucknill a short time since affecting the question as to who is a money-lender within the meaning of the Act of 1900, and accordingly an account of this decision will be found in our Law Reports this week. The plaintiff described himself as a director of companies and a Chartered Secretary. He denied that he was a money-lender, but admitted that he was not secretary of any particular company, and stated that he arranged mortgages, obtained capital for companies, and did a general city financial business. He did not deny that he had lent money, but he did deny that he carried on the business of money-lending, while at the same time admitting that he did finance people in the course of his business. On the plaintiff's admissions his Lordship held that he was a money-lender within the meaning of the Act, and that, being unregistered, he could not sue for money lent. He accordingly gave judgment for the defendants, with costs. The question as to who is a money-lender must, of course, be a question of fact to be decided upon the merits of each case as it arises, but if it is to be held that all persons who in the course of their regular business occasionally lend money are unable to recover unless they are registered as regular money-lenders, many persons who would be very much surprised, and even indignant, to hear themselves described as money-lenders, may find that in the eyes of the law they occupy that position.

**Income Tax and Underwriters.** An interesting decision was delivered in the first division of the Court of Session at Edinburgh on the 7th inst. in the course of proceedings taken by the Inland Revenue authorities against Mr. Hugh Gibb under the Income Tax Act of 1842. The defender, who was the representative partner of a firm of Glasgow underwriters, had refused

or neglected to deliver to the Inland Revenue authorities a statement giving the names and addresses of those persons for whom his firm acted as underwriters, together with a statement of the profits or gains arising to each person. Lord Johnston in the Outer House had decided that while the defender was bound to furnish such a list of names and addresses, he was not bound to furnish a statement of profits; but on appeal this decision was reversed, and the defender was held to be liable to the statutory penalty of £50 and for the costs of the proceedings.

**Retirement of the Birmingham Official Receiver.** Mr. Luke J. Sharp, who has occupied the position of Official Receiver at Birmingham since its creation as a result of the Bankruptcy Act, 1883, has been retired in consequence of his reaching the age limit fixed by the regulations of the Civil Service. In view of the terms under which he was appointed it may well be doubted whether these regulations are binding upon Mr. Sharp, but the present Government has, of course, few supporters in Birmingham to offend, and the President of the Board of Trade is perhaps the least likely of its members to give any very special consideration to the views of Birmingham residents. Mr. Sharp, who was formerly in practice as an accountant, gave up a lucrative practice to take over the appointment of Official Receiver at a salary of £1,000 per annum, on the condition that the appointment should be permanent with a right to pension proportionate to the years of service, undertaking on the other hand to devote the whole of his time to the work and not to engage in any private business. Since his appointment the Oldbury and Worcester districts have been added to the Birmingham district, without, however, any corresponding addition being made in the salary of its Official Receiver. Mr. Arthur S. Cully, the Official Receiver of the South London district, has been temporarily appointed to the position, pending a permanent appointment.

**Local Authorities and Unauthorised Borrowings.** In a note which appeared in our last issue under the above heading we referred to the fact that an execution had been issued against a local authority, and that the Sheriff's officer was in possession of the Town Hall. Our contemporary *The Solicitors' Journal*, in commenting upon the matter, points out that while a

judgment or order for the recovery or payment of money can be enforced against a corporate body, as against an individual, embarrassing questions sometimes arise as to whether the real or personal property vested in a corporation is or is not impressed with a definite trust, so as to prevent it being available to satisfy the debts of judgment creditors. A creditor has been restrained from levying an execution upon moneys raised by rates and in the hands of the treasurer of a union; but apparently, with the exception of such money, the land and other property of a union is vested in it absolutely for the general benefit of the parishes without any definite application being impressed upon any part of this property beyond its being for the benefit of the parishes and subject to their debts, and, therefore, capable of being sold for their debts. It is pointed out that sometimes the Legislature has specially interfered, as in the case of the Railway Companies Act, 1867, to protect the property of a corporation from seizure in execution, and the absence of any such express provision to protect the property of a local authority is thus strong presumptive evidence that such property is liable to seizure.

**Cumulative or Non-cumulative Preference Dividends.** In our issue of the 26th ult., commenting upon the recent decision of Mr. Justice Joyce in *Foster v. Coles and M. B. Foster & Sons, Ltd.*, we expressed the view that if articles of association were carefully drawn there ought to be absolutely no doubt as to what the holders of any class of shares in a public company are entitled to. From a paragraph which appeared in last week's issue of the *Law Journal* we gather that it is perfectly clear that the intention at the time of the reconstruction of the company was to reduce the rate of dividend on its preference shares and to make such dividends non-cumulative instead of cumulative. It is equally beyond doubt, however, that the memorandum of association of the reconstructed company did not carry out this intention so far as the last part is concerned, for in the old memorandum the preference shares were described as carrying a cumulative preferential dividend of 6 per cent. per annum, and in the new memorandum as carrying a preferential dividend of 5 per cent. per annum. It appears to have been overlooked, however, that in the absence of express mention a preferential dividend is always cumulative. Apart from the legal aspect of the matter it must, we think, be admitted that from the point of view of

investors in preference shares it is only equitable that, if their rights to a preference dividend are in any way limited, the facts should be clearly stated.

### Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### Graduated Income Tax.

*(To the Editor of The Accountant.)*

SIR,—I have a great admiration and fear of the German graduated income-tax system, it being almost impossible to escape the assessor's notice, all incomes of £45 and over being taxable.

Forms are supplied (as in England) upon which you are required to fill in your income from all sources. If you neglect to send in this form your assessment is immediately raised; you can, of course, appeal, and perhaps are given fourteen days in which you must substantiate your claim, or the assessment stands.

The tax is payable quarterly in advance; any delay in payment means a heavy extra charge for expenses of collection.

The following list, showing the graduated tax, may be of interest :—

Numbers showing the intermediate rates omitted.	Income. £	Tax (Yearly)
1	45	6/-
7	100	31/-
10	150	52/-
14	200	92/-
16	250	118/-
18	300	146/-
26	500	300/-
51	2,000	1,280/-

Yours faithfully,

ERIC L. HEATHCOTE.

Berlin-Westend, 8th June 1906.

### Interest in Lieu of Notice.

*(To the Editor of The Accountant.)*

SIR,—A trustee under a will sells some property upon which there is a mortgage.

On paying off the mortgage he has to pay interest in lieu of notice; is this interest chargeable against the tenant-for-life or the remainderman?

The trustee had power under the will to retain the property, and did so for some years, it was not a realisation upon the death.

If you will advise me on the matter I shall be glad.

Thanking you in anticipation,

Yours faithfully,

6th June 1906.

F. JNO. H.

### Auditor's Certificate and Report under the Companies Act, 1900, and Building Societies Acts.

*(To the Editor of The Accountant.)*

SIR,—

- (1) Requirements of Auditors.
- (2) Dividends out of Capital.
- (3) Building Societies' Advances to Officials.

It is from such letters as "Juvenis" and "Perplexed" (issue 26th May) and "A. R." (issue of 2nd June) write, that a clear understanding of the use of the auditor's certificate and report is to be attained.

"Juvenis" asks whether he can *require* a debt owing by the manager of a limited company, in respect of cash advances which have been authorised by the board, to be stated separately in the Balance Sheet.

"Perplexed" asks whether he ought to mention in his certificate that the dividends on preference shares of a limited company have been paid out of capital.

"A. R." asks whether he is bound to *report* to the shareholders of a building society that the directors have granted to an official a loan which, in his opinion, is insufficiently secured.

With reference to my views as to the auditor's certificate and report, the reasons for them have already been stated in *The Accountant*, and it is not necessary to say more at present than that an auditor seems to have no right to *require* that his Balance Sheet be altered, his duty being to *report* upon the Balance Sheet submitted. I have before given practical reasons why the *report* should not be printed, but should only be read to the meeting, and would now adduce a further question in argument

which may appeal to some. Why should the Act require that the report be read to the meeting if the Act intended the report to be printed and circulated beforehand?

Whether in this particular case the auditor should *report* upon the manager's debt may depend upon considerations not disclosed in the letter; but certainly the authority of the board for the loan will not necessarily absolve him from the duty of reporting to the shareholders, and probably the classification under Sundry Debtors is inaccurate.

If my views are sound, "Perplexed" should certainly not mention in his *certificate* that a dividend has been paid out of capital. If there is no undivided profit reserved for the purpose, the dividend is truly paid out of capital. It is hardly possible to conceive circumstances in which he would be justified in omitting all mention of it in his *report* to the shareholders, and that I venture to suggest in opposition to your view, even although the point is quite clearly shown in the Balance Sheet. The auditor's statutory duty is to report upon the accounts. If this is a vital point, even although clearly stated in the accounts, he must surely report upon it. Some of your readers, having access to English cases, will no doubt be able to give the authority for a judicial dictum to the effect that a hint from an auditor or a carefully turned statement of facts more pregnant than they seem will not absolve an auditor.

In regard to Building Society Accounts, the Chief Registrar of Building Societies has issued a form of accounts, with auditor's certificate appended. Section 22 of the Building Societies Act, 1894, indicates that the auditor shall either certify the account as correct, "or specially report to the Society in what respects he finds it incorrect," &c. The form of the authorised certificate would seem to require that any special report should be mentioned in it, unless it was made part of the certificate.

There are two points in "A. R.'s" letter—

- (1) What duty has an auditor in reference to valuations of building society security subjects?
- (2) Is there any special objection to officials obtaining advances on good security?

In regard to the first—above all, an auditor must be discreet. He must weigh the possibilities of damage to the society's credit against the benefit likely to accrue to the society from a discussion and possible action by

the members, and in the particular matter of valuations he must move with great caution. In general, it might be said he had nothing whatever to do with such. He gives no certificate as to valuation, but if, for example, a heritable subject were in the hands of a society, and had been put up for public sale at a price lower than the value appearing in the Balance Sheet, and no purchaser had come forward, the auditor would have to consider whether he should report the facts.

In Scotland it is common enough for both officials and directors to be borrowers from a building society on the usual conditions. There seems to be no objection to lending to officials other than directors, but it might be suggested that directors lending to a co-director, even though he took no part in the discussion or decision, are acting in breach of trust; but if such is the general law, it seems to me that the rules ought to enable the directors to be borrowers from the society, or otherwise to make borrowers eligible as directors, for borrowers may have interests opposed to investing members which ought to be represented on the board. But that is a digression. No doubt some of your readers will furnish English authority on the subject of the legality of a loan by a society to an official—that term including directors.

THOS. J. MILLAR.

#### Bankruptcy Committee and Deeds of Arrangement.

(To the Editor of The Accountant.)

SIR,—In view of the interest at present attaching to this matter perhaps you will permit me to trespass upon your space. I have made a rough draft of an Act to supplement the Deeds of Arrangement Act, 1887, together with a few forms. It will be obvious that they are not drawn by an expert draughtsman, and perhaps a coach-and-six can be driven through most of the sections, but in the present form they adequately express, for general purposes, my views as to what should be pressed for. I have sent a copy of the suggestions to the Secretary of the Committee, and he informs me they will receive careful consideration. The main point is that if a deed is confirmed it becomes a valid document, and (1) the debtor cannot file his petition so as to set it aside; (2) a trustee can give a good title without waiting three months, and thus avoid the injustice as shown by *Davies v. Petrie*; and (3) the release to the debtor is a valid one, and binding upon all creditors except those who would not be bound in bankruptcy.

It would also put an end to the injustice hitherto shown to a trustee under deeds of arrangement avoided by bankruptcy, as such trustee has the power to apply to the Court to dismiss the petition and confirm the deed. If the circumstances are such that the Court will grant a receiving order rather than confirm the deed, there will probably be something connected with the matter depriving the deed trustee of any consideration. But the Judge or Registrar could make one of the terms of granting the petition an allowance to be fixed by the Registrar after the Official Receiver has reported.

Where the Court declines to make an order confirming the deed, it will mean that the trustee cannot give a good title until the expiration of three months, the debtor may file his own petition and upset the deed, and any non-assenting creditor will not be bound. I have not dealt with the rules which would be necessary for the proper working of the Act.

I am not giving evidence before the Committee, but there may be among your readers witnesses who may deem at least the central idea worthy of support.

Yours truly,

June 2nd 1906. DAVID P. DAVIES, F.S.A.A.

#### THE DEEDS OF ARRANGEMENT ACT, 1907.

1.—This Act may be cited for all purposes as The Deeds of Arrangement Act, 1907.

2.—This Act shall not extend to Scotland.

3.—This Act shall apply to every deed of arrangement registered under the Deeds of Arrangement Act, 1887, which shall be executed on or after the first day of January 1907.

4.—It shall be the duty of the trustee or trustees appointed under any deed of arrangement executed after the first day of January 1907, and registered or to be registered under the Deeds of Arrangement Act, 1887, to forward to each creditor of whose claim he or they shall have had notice a statement stating the full name, address or addresses of the debtor, and his description, informing the creditors that the debtor has executed a deed of arrangement, and the date of the deed and names of the trustee or trustees and committee of inspection, if any. Such circular shall be sent to the creditors before the expiration of the fifth day after execution of the said deed.

5.—(1) In addition to the documents prescribed by Section 6 of the Deeds of Arrangement Act, 1887, as necessary for presentation on registration, the Registrar shall require production of the following documents:—

(a) A copy of the circular referred to in Section 4, with an affidavit of the trustee or his clerk verifying postage of same to all creditors set forth in the debtor's affidavit.

(b) A statement of the assets passing under the deed, with an estimate of the value of same, certified by the trustee.

(c) A cover note or bond of an approved guarantee society to an amount not being less than the value of the assets as shown by the trustee's certificate.

(2) Where a composition is proposed under a deed presented for registration the amount of the bond shall be the amount payable to the creditors by way of composition.

6.—Where a petition in bankruptcy is presented against any debtor the form of the petition shall state whether the petitioning creditor has knowledge of any deed of arrangement executed by the debtor within three months of the presentation of such petition, which deed has been registered, and shall state the date of the deed and of its registration.

7.—Where a deed of arrangement has been registered and a petition in bankruptcy is presented against the debtor executing it within three months of its execution, in all cases where the trustee under the deed shall make an application to confirm the deed it shall be the duty of the Registrar of the Court to which the petition is presented to send by post to each creditor named in the affidavit of the debtor filed under the deed a notice stating that a petition has been presented, together with the day and hour and place of hearing, and stating that any creditor or person claiming to be a creditor may appear and be heard, and such notice shall be posted seven days before the day fixed for hearing the petition. Such notice shall also be posted to the debtor, trustee, and district official receiver, who shall be entitled to appear and be heard.

8.—Where a petition in bankruptcy is presented against a debtor under the circumstances set forth in the two foregoing sections, the trustee under the deed shall have the right to make application to the Court to dismiss the petition and to confirm the deed, and the application of the trustee and the petition of the creditor shall be heard together.

9.—The trustee under any deed of arrangement which has been registered may, at any time after he shall have received the assents of creditors to the extent of a majority in number and three-fourths in value, whether a petition in bankruptcy shall have been presented or not, make application to the Court having bankruptcy jurisdiction in the district to confirm the deed, and the effect of confirmation shall be the same as if the deed had existed for a period exceeding three months, and shall be binding upon all creditors who would be bound if a receiving order in bankruptcy had been made against the debtor.

10.—(1) Upon application for confirmation by a trustee of a deed the Judge or Registrar shall have discretionary power to approve and confirm the deed as registered if it appear to him that a majority in number and three-fourths in value of the creditors, or persons claiming to be creditors (of which latter event he shall be judge for the purposes of the calculation), are in favour of the estate being wound up under the deed, and that there does not appear to be

anything relating to the conduct or property of the debtor requiring further investigation, or if it is in the interests of the creditors that the deed shall be confirmed, on such terms as he shall think fit.

(2) The Judge or Registrar shall, on the hearing, have power to remove the trustee under the deed and to appoint another in his place, or may appoint some other person, who shall be either the Official Receiver in Bankruptcy or a member of the Institute of Chartered Accountants, or of the Society of Accountants and Auditors, to act as trustee of the estate jointly with the trustee appointed. The Judge or Registrar shall have full power to make all inquiries he deems to be necessary, and may adjourn, discuss, or approve any application upon such terms as he shall think fit, including the appointment of a committee of inspection, or the removal of one or more persons from a committee and the substitution of other person or persons.

(3) The Judge or Registrar shall have the same powers upon application by a trustee under a deed where a petition has been presented as where a petition has not been presented.

(4) It shall be the duty of the debtor, and of the trustee or trustees under a deed, to attend on the hearing of an application or petition, and they shall be bound to answer any question by any person entitled to be heard which the Court may allow.

11.—Where the consent of the Court has been obtained to an application for confirmation by fraud or misrepresentation, or the concealment of any material fact, the Court may set aside its order of confirmation, and order the guilty person or persons to pay the whole cost of the proceedings.

12.—Where the trustee under any deed of arrangement shall pay any sums received by him as trustee and belonging to the estate into his own private banking account, or shall neglect to pay same into a special banking account to be opened in the name of the trust estate, he shall be subject to a penalty of fifty pounds and to deprivation of office, and the Court shall appoint some person to succeed him as trustee.

13.—Where a deed of arrangement has been confirmed by the Court a trustee under same shall have the same powers for applying to the Court for directions upon any matter arising out of the deed as a trustee in bankruptcy possesses, and the directions of the Court shall be binding upon all parties to the deed.

*Form of Statement of Assets by a Trustee passing under a Deed of Assignment.*

(Heading.)

I, A. B., of C., the trustee appointed under the above-mentioned deed, hereby certify the following to be a true copy of the assets as disclosed by the debtor, and that the amounts estimated to be realised are, in my opinion, the correct realisable values:—

	As Estimated by Debtor.	As Valued by Trustee.
Cash at Bankers .. ..	£	£
„ in hand .. ..	..	..
Stock-in-Trade (cost £ ) ..	..	..
Machinery (cost £ ) ..	..	..
Fixtures and Fittings (cost £ ) ..	..	..
Farming Stock .. ..	..	..
Furniture (cost £ ) ..	..	..
Life Policies .. ..	..	..
Other Property .. ..	..	..
Book Debts—Good, £ ..	..	..
„ Doubtful, £ ..	..	..
„ Bad, £ ..	..	..
Surplus from Securities .. ..	..	..
	£	£

I hereby certify that a guarantee bond of £ is sufficient to cover the value of the assets passing under the deed.

Signature of trustee.

Witness:

*Form of Application by Trustee for Confirmation, where no Petition in Bankruptcy has been presented.*

(Heading.)

Name of Trustee

Address

Description

Names and addresses of Committee of Inspection, with amounts of their respective claims

Number of unsecured creditors filed

Amount of their claims, £

Number of assenting creditors, amount £

Number of non-assenting creditors, amount £

Similar particulars as to secured and partly secured creditors.

I, the trustee under the above-mentioned deed, hereby make application to the Court to confirm the deed of arrangement on the ground that a majority in number and three-fourths in value of the creditors of whose claims I have had notice have assented in writing to the deed. I hereby certify that the first schedule hereto annexed contains the names, addresses, and amounts of the assenting creditors, and that, to my knowledge, no payment or consideration of any kind has been made or promised to the creditors, or any of them, to induce the assent. And I hereby certify that the second schedule hereto annexed contains the names, addresses, and amounts of all non-assenting or dissenting creditors of whose claims I have had notice, and that notice of this application was sent to all such creditors by post on the day of 190 . And I hereby certify that the third schedule contains a true and complete statement of my receipts and payments under the said deed.

Signature of trustee.

Witness

Address

Description



*Notice to Non-assenting Creditors by Trustee of intention to apply for Confirmation of Deed.*

In the matter of a deed of arrangement executed by A. B., of C., on the      day of      190      , and registered on the      day of      190      .

I, E. F. of G., the trustee appointed under the above-named deed, hereby give you notice that after the expiration of seven days I shall apply to the Judge of the County Court for confirmation of the said deed, on the ground that a majority in number and three-fourths in value of the creditors have assented to the said deed; and further take notice that any objection you may have to the confirmation of the said deed must be given to the Registrar of the Court on or before the      day of      190      .

Name of trustee  
Address  
Description

*Notes.*—The Registrar of the Court has fixed the hearing of the application for confirmation for      day the      inst. at      a.m., at the Court House,      Street,      , when any creditor who has filed notice of objection may attend and be heard.

*Notice of Objection by a Creditor to the Confirmation of a Deed of Arrangement.*

(Heading.)

I or We, the undersigned creditor of the above for the sum of £      :      :      , hereby give notice that it is my (or our) intention to oppose the application by the trustee for confirmation of the deed of arrangement herein.

Name of creditor	Creditor's signature
Address	Witness
Description	Name
Amount of claim, £	Address
	Description

To the Registrar of  
The County Court,  
Street.

*Form of Order of Court on application for Confirmation of Deed, where no Petition has been presented.*

(Heading.)

Upon the hearing of an application this day that a deed of arrangement, executed by the above-named debtor, be confirmed, and upon hearing the various parties entitled to be heard, it is hereby ordered that

[The deed be confirmed, subject to the following terms.]  
or

[The Court declines to make an order confirming the said deed.]

*Application by Trustee under Deed for Confirmation where a Petition in Bankruptcy has been presented.*

(Heading.)

I, A. B., of C., the trustee named in the deed of arrangement executed by the above debtor, dated the      day of      190      , and registered on the      day of      190      , against whose estate the Court is asked to make a receiving order in bankruptcy, do hereby make application to the Court that the petition of the creditor may be dismissed.

The total liabilities to      unsecured creditors filed      £  
under the deed amounts to      ..      ..      ..

The assenting creditors number      , and amount to

Leaving      unassented, amounting to      £

Particulars of secured or partly-secured creditors.

The assets, as set out in the debtor's affidavit filed with the deed, amount to      ..      ..      ..      £

Of which there has been received by me in cash      ..

Leaving assets unrealised      ..      ..      ..

Which are estimated to produce      ..      ..      ..

The total sum received by me amounts to      ..      ..

Out of which payments have been made amounting to      ..      ..      ..      ..      ..

Leaving assets in hand amounting to      ..      ..

I produce herewith a banker's pass book showing the sum to be placed to my credit in a Special Banking Account, together with a certificate of the banker bearing to-day's date, and together with the original deed and the assents received by me from creditors.

And I further make application to the Court to confirm the said deed of arrangement, on the ground that a majority in number and three-fourths in value of such creditors have already assented to the deed, as shown by the schedule attached.

Trustee  
Address  
Description

*Notes.*—The Schedule must contain the names of all the creditors with their addresses, and the amounts of their respective claims, with the word "assent" written opposite to those who have assented.

*Form of Notice by Registrar to Creditors of presentation of Petition, where a Deed of Arrangement has been registered.*

(Heading.)

In accordance with the provisions of the Deeds of Arrangement Act, 1907, I hereby give notice that a petition has been

presented to this Court asking that a receiving order in bankruptcy be made against the above debtor which will set aside the deed of assignment executed. The hearing of the petition is fixed for o'clock in the noon of day, the 190 , at the Court House, Street, when any creditor or person claiming to be a creditor may attend and be heard.

Dated the day of 190 .

Registrar.

To \_\_\_\_\_,  
A Creditor.

*Form of Authority to Approve or Oppose the Application for Confirmation of a Deed of Arrangement where a Petition in Bankruptcy has been presented.*

(Heading.)

We, the undersigned creditors of the above for the amounts set opposite to our respective names, desire you to attend at the County Court at on the hearing of the petition presented for a receiving order in bankruptcy in support of, or in opposition to, same.

Creditor's Name	Address	Creditor's Signature	Amount of Claim	Support Oppose
-----------------	---------	----------------------	-----------------	----------------

To Mr.

*Solicitor,  
or Trustee under the said Deed.*

*Form of Order of Court where Petition has been presented against a Debtor who has Executed a registered Deed of Arrangement, dismissing same.*

(Heading.)

Upon the hearing of a petition this day praying that a receiving order in bankruptcy be made against the above-named debtor, and upon reading the several affidavits filed, and hearing the various persons entitled to be heard, it is ordered that the petition be dismissed, and that the taxed costs thereof be borne by

And it is further ordered upon an application for confirmation of a deed of arrangement executed by the said debtor on the day of 190 , and registered on the day of 190 , that such deed be confirmed (upon the following terms) :—

That Mr. of shall be associated jointly with the trustee thereunder, as joint trustee under the deed, in all respects as if he had been named therein.

That Mr. of shall be added to the members of the committee of inspection, or that the

following persons shall be a committee of inspection, with such powers as are possessed by a committee of inspection in bankruptcy, so far as such powers are not inconsistent with the terms of the said deed.

That the taxed costs of the trustee of and incidental to this application shall be paid out of the assets under the deed (or borne by the petitioning creditor).

### The Metropolitan Water Board Accounts and The Local Government Board Auditor.

(To the Editor of The Accountant.)

SIR,—The audited abstract of accounts of this Board from the several "appointed days" to the 31st March 1905, which was issued on the 1st inst., is remarkable in one or two ways.

In the first place the Revenue Account of the Water Fund with respect to the undertakings transferred from the Metropolitan Water Companies and the Councils of the Urban Districts of Enfield and Tottenham is shown as one continuous account of expenditure and income to show the deficiency of £9,550 3s. 5d. (pp. 29 and 83), from the "appointed days" to the 31st March 1905.

No exception can be taken to this method of stating the Revenue Account, particularly as the annual contribution towards the redemption of Metropolitan Water "B" Stock is carefully distinguished from the ordinary outgoings and income of the year.

In the second place the District Auditor has thought it advisable to certify and pass the Board's Balance Sheet with the following items *inter alia* included therein :

#### Liabilities.

INTEREST AND DIVIDENDS:—		£	s	d
Interest on Debenture Stocks and Mortgage				
Loans, accrued to date .. ..	120,564	15	5	
Dividends, Water "B" Stock, accrued to date (p. 80) .. ..	83,136	6	10	
	203,701	2	3	
ANNUITIES :—				
Amount accrued to date (p. 80) .. ..	2,656	5	0	
Making a total of	£206,357	7	3	

These items are of necessity included in the charges for interest and dividends in respect of the borrowed capital (p. 18) amounting to £45,986,977 17s. 9d., which latter sum includes the cost of the new communications, additional supply works, and extensions.

It is obvious, therefore, that the Balance Sheet would not have been truly set forth, nor would the deficiency have been correctly ascertained for the information of the local authorities mentioned in the Metropolis Water Act, 1902, unless account had been taken of these heavy and not unimportant liabilities.

It may interest your numerous readers to see how the Water Board's finances are dealt with by the Government auditor, as your columns recently recorded some peculiar methods of treating the accounts of the Bermondsey and St. Marylebone Boroughs in connection with their electrical undertakings.

Are the varying and changing requirements of the Government auditor and his masters (the Local Government Board and their Statistical Department) to the public advantage, or does chaos as to principles and requirements reign supreme in the Whitehall offices?

I am, Sir, yours sincerely,

FELLOW OF THE INSTITUTE OF MUNICIPAL  
TREASURERS AND ACCOUNTANTS (INCORPORATED.)

10th June 1906.

### The New System of Account Books.

(To the Editor of *The Accountant*.)

SIR,—The system you describe on p. 722 of *The Accountant* of the 9th inst. is by no means new, at least as regards Cost Books.

On p. 67 of the 1885 edition of "Practical Book-keeping adapted to Commercial and Judicial Accounting" (Section VI.—The Cost Book system . . . fully explained), by F. Hayne Carter, C.A., there appears the following:—

"Each page, except the first one, is cut in such a manner that it is half an inch shorter at the foot than the one immediately preceding it. In this way, supposing a colliery has eleven workings or galleries, and allowing one page to each working, on turning up the twelfth page the summations of the eleven preceding pages are exposed to view."

Yours truly,

June 12th 1906.

ARTICLED CLERK.

### Card and Loose-Leaf Ledger Systems and their Adaptability to the Jewellery Trades.

By ALLEN EDWARDS, F.C.A.

IN the consideration of this article it should be borne in mind that the object of the writer has been to present the subject to his readers in a plain, unbiassed, and impartial manner—to describe the advantages and disadvantages of the systems treated of rather than to either unduly recommend or question them. Although they have been for many years extensively in use in America and Canada, the systems are, in this country, practically in their infancy, and time alone can show if they will in the future be generally adopted.

Probably the systems have not yet been greatly adopted in the Jewellery Trades. The writer therefore proposes, as briefly as he can, to show to some extent how they may be made applicable to the Trades.

#### *The Card Ledger System.*

It must be admitted at starting that the Card Ledger System is more adaptable to large businesses than to small ones. Many jewellers would stand aghast at the thought of a business with 90,000 Sold Ledger Accounts and 500 or 600 Sold Ledgers. In such a case the system, when once used, would probably be found to be for all practical purposes a necessity. With small jewellers, however, the number of whose customers might be anything from 50 to 200, it is not quite certain that the system in all cases would be more suitable than the old one. In the consideration of any system of bookkeeping regard must be given to a number of circumstances special to the particular business under consideration. Among these are the number of customers, the amount of safe accommodation, the amount of desk accommodation, the number of Sold Ledger entries, and whether these entries are for large or small sums, the number and ability of the bookkeeping staff, and the general requirements of the business. The Card System will probably be found, from what may be called the *Stationery Cost* point of view, more expensive relatively in small concerns than in large ones. It has, however, been more than once pointed out how advisable it is for small businesses to be conducted with the view that they may, in the near future, become large ones. When once a business and a staff of clerks are educated according to one system, it is not always an easy matter to make them assimilate another. And experience shows that, where a business is conducted with a clerical system which works smoothly and successfully, there is more probability of that business increasing than if conducted with a system which works with difficulty or friction.

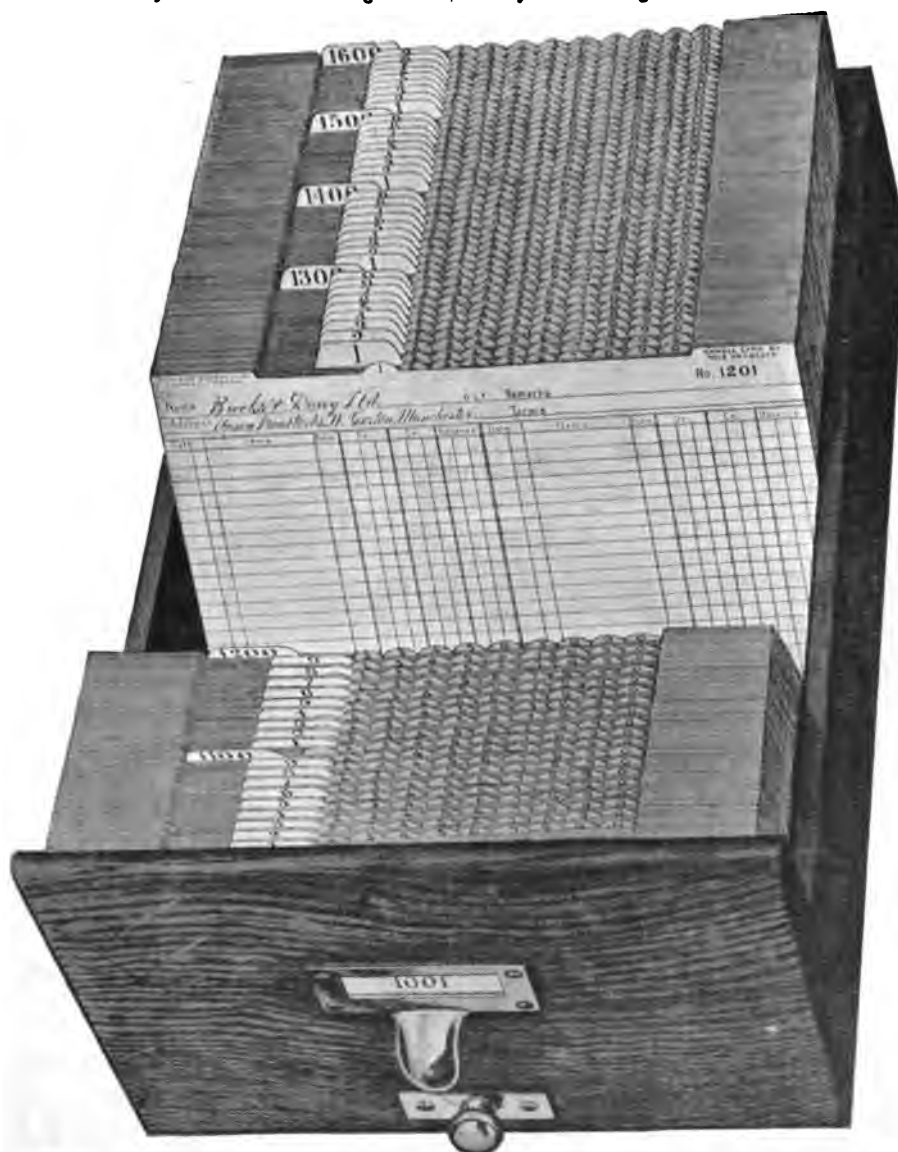
In the writer's consideration of the system he has been greatly assisted by the facilities afforded to him of seeing its working at the offices of Messrs. Wilkinson & Riddell, Lim., and Messrs. Kynoch, Lim., both of Birmingham. In the case of Messrs. Wilkinson & Riddell, Lim., its adoption is largely due to the close study and energy which have been brought to bear upon it by Mr. John Wilson, one of the directors of the company, and who is, perhaps, one of the most capable bookkeepers in England; and the system generally throughout the country owes a great deal to him for its present state of perfection. Both at Messrs. Wilkinson & Riddell's, Lim., and Messrs. Kynoch's, Lim., the perfection to which the system has been brought and

the smoothness with which it works were a revelation to the writer, as something very different to what could have been anticipated twenty years ago.

Briefly, the Card Ledger System means that, in the place of the ordinary old-fashioned Ledgers, the accounts with customers and other business records are kept on loose cards, these cards being placed in their proper order in drawers, or, as they are called, "trays," the trays lying on the bookkeepers' desks while in use, and being placed in safes when not in use.

The following are two fairly representative illustrations of trays containing cards in use.

Form 1.



Form 2.



The cards and the trays can be ordered and made to any sizes to suit requirements. The size of the card usually adopted for ordinary Ledger work is 10 in. by 8 in. The cards are ruled specially to suit the purpose for which they are intended. The ordinary "bread and cheese" purposes for which the system may be found suitable in the jewellery trade are as follows:—

(1) Ordinary Ledger work.

(2) Stock-keeping work.

(3) Diamond checking (in manufactories).

(4) Workmen's Ledgers.

(5) Cost Books.

The writer does not wish it to be supposed that he goes so far at present as to recommend the new method for all these purposes, whether the concern be large or small. Each firm's case must be considered upon its own merits.

It is within the writer's knowledge that the cards have already been adopted for diamond checking in one manufacturing jewellery concern in Birmingham, and it is believed that they will be found to answer all their purposes and requirements.

To return to our forms. Form 1. On examination the tray will be found to contain 600 cards, numbered 1,001 to 1,600. A reference to the illustration will show that the finger can be placed instantaneously upon any card which may be wanted. That is to say, the cards do not have to be turned over until the one which is wanted is brought to light. This is an enormous advantage where rapid work is essential. The writer has seen these trays in actual work, and it is a peculiarity of them that if a single card be missing the eye detects its absence in one momentary glance. If, however, a page in an ordinary Ledger of 600 accounts be torn out, its loss cannot be detected without practically examining every leaf in the book. As some insurance against the abstraction of a card and the insertion of another in its place, the unused blank cards should be kept locked up, each separate card being previously registered. And it may be advisable that every card in use should have, at one of its top corners, some authorised person's initial, by which means it would soon probably be known if an unauthorised card had been inserted in the tray.

The Form 1 is generally adopted for ordinary Sold Ledger work in large concerns, where there are a great number of accounts. There may be ten to twenty trays in actual use, each customer of the business being allocated to the tray to which he may be classed. Thus the trays may be arranged alphabetically, or in districts, or to contain the names of customers of special travellers, or of customers who buy special articles of the firm's manufacture, and so on. Each customer has a denoting number, and he is known by that number throughout the books and staff of the establishment. An index to each tray is necessary. Naturally, only one account is kept on one card. Rulings are printed on both sides of the cards, and when a card is filled up, another card is put in its place. Thus much time is saved in indexing, Ledger headings, &c. At the bottom of the illustration, Form 1, will be noted the handle of a rod. When the Ledger is not in use the cards are held in their places in the tray by the rod running through holes punched in the lower margins of the cards. This permits the cards to be freely examined without the necessity of removing or displacing them. Naturally, when the Ledger is in actual use the rod is drawn out. When not in use the rod can be used to lock the Ledger. There are several methods by which overdue Ledger Accounts can be instantaneously shown. One of the most simple of these is to affix at the top of each overdue account card a small metal clip. The clips will show at once the accounts requiring special attention or consideration.

Form 2. Here is shown another method of keeping the cards. It will be seen that this method would probably answer for Stock Book purposes, for Diamond checking, for Cost Books, and for other ordinary Ledger work, where the number of accounts is not large, and where it may be advisable to divide them into sections. The illustration shows the method regarding stocks in a hardware business. For the words "Angles," "Bars," and "Bolts," &c., we have only to insert the words Rings, Brooches, Bracelets, &c., to make the system intelligible. The cards containing these words are the index cards, on which are entered the references to the cards which follow. In the case of rings, for example, the references would be to Half-Hoop, Marquise, Gipsy, Keeper, Signet, &c. The cards are ruled as required.

Among the principal advantages of the Card Ledger System (in addition to what is stated elsewhere) may be mentioned the following:—

(1) In times of stress, that is, when accounts have to be sent out, or books balanced for stocktaking, several persons can be at work upon a Ledger at one time. For instance, in the case of a tray containing 600 accounts, the cards can be distributed among half-a-dozen clerks. In the case of an ordinary Ledger only one person can work upon it at once.

(2) The principals or board of directors frequently wish to see a certain Ledger Account. In such a case the card containing the particular account required can be sent to the private office or board room for inspection, where, otherwise, the Ledger would have to be sent, in which latter case the Ledger clerk would be kept waiting until the Ledger were returned; and the same rule would apply where records have to be produced in Courts of law. Then only the records actually required need be produced. There is usually an objection to producing the whole Ledger, as in that case the private business affairs of the firm are unnecessarily liable to disclosure or inspection by unauthorised persons.

(3) In the case of an ordinary Ledger one account may appear in half-a-dozen different parts of the Ledger, and also in half-a-dozen different parts of a prior or succeeding Ledger. With the Card Ledger System all the used cards are put away in their proper trays, with the result that all the cards relating to one name are kept together. Thus, in case of need, the whole transactions for many years can be referred to without difficulty. By the old system many huge and bulky Ledgers would have to be brought out, dusted, and the references found; the reference involving much time, labour, and inconvenience.

(4) Assuming the principal is at home indisposed, or absent on a journey or a holiday, and he wishes to see the

state of, say, eight or ten Ledger Accounts, the cards can be sent to him, and he can examine them, even if laid up in bed; and still the Ledger work at the office can go forward in the usual way, without intermission.

(5) An enormous saving of space in the storing of old Ledgers is achieved. Compared with the space taken up by old Ledgers, that required for storing used cards or Loose-Leaf Ledger leaves is infinitesimal.

(6) The cards and cabinets can be made to any size required, and the trays be made to contain any number of cards—any number, however, beyond 1,000 will probably be found unworkable.

(7) By means of an appliance called the "addressograph" Ledger headings can be printed on the cards at the rate of several hundreds in an hour. Here is an enormous saving of time over the old system.

(8) The trays only contain "live" accounts, and thus, in making out statements, or extracting balances, there is no unnecessary labour, as in the old system of going through "dead" Ledger work.

The chief disadvantage of the Card System is the possibility (already referred to) of abstraction of the cards. In large concerns, where the work is "departmental"—that is, for instance, where the Ledger clerk would not be allowed to handle any cash, or to take the statements to the post—any danger from this source would not be very great. But in small jewellery concerns, where the staff would have access both to the gems or the stock and the cards containing their records, the danger might be an ever present one; and, moreover, it might be argued that traders who *intend to fail* might adopt the Card System as a means by which

they could, if they wished, easily "dispose of" the records of their businesses. But, after all is said, experience shows that those who intend to be dishonest will be so, Card System or no Card System, though much can be done to reduce opportunities and temptations; and, lastly, it should be borne in mind that it is the fact that the cards *can be removed* which is the very foundation of the system. And those who have worked the system will probably tell you that the danger of the abstraction of cards is more a danger *in posse* than *in esse*.

#### *Safe and Desk Room.*

It may probably be found, in some cases, that the Card System involves the use of more safe room than the old system. The trays are made to fit into cabinets. These cabinets present the appearance of modified chests of drawers. In some concerns the cabinets are made to run on castors. At the commencement of each day the cabinets are wheeled to the desks where the Ledger clerks do their work. The clerks then take out their trays and work with them at the desks. At the close of the day the trays are placed in the cabinets again, and the cabinets wheeled back into the strong-room. This system is not always practicable. Another system is for the trays to be made to fit in partitions, specially constructed in the safes, these safes being sometimes fixed at the back of the desks where the Ledger work is done. In this case the cards will probably occupy less safe room than the old Ledgers did. Naturally, not a great deal of desk room is required, because the clerk, as a rule, would not be at work upon more than one tray of cards at the same time.

The following is an illustration of a cabinet containing two trays:—

Form 3.



These cabinets can be made to contain any number of trays, but the writer has chosen to illustrate one with two only, as likely to be generally suitable to jewellers. Thus, one cabinet with two trays can be used for ordinary Ledger

work in one part of the building, another for stock-keeping work in another part, and another for diamond work, &c. The trays, not being too bulky, can easily be conveyed to the strong-room at night, whereas in the case of larger

cabinets this would not be practicable, unless the strong-room accommodation were greater than is usually found in jewellers' establishments.

Used cards should be kept in their original trays until the year's audit work is completed. They can then be transferred to their permanent abiding trays.

The Card Ledger System is adaptable to an almost unlimited number of purposes, other than those already referred to. Space only permits us to refer to a few of these:—

- (1) The cataloguing of libraries and collections.
- (2) The filing of correspondence with customers.
- (3) The keeping of records of customers, including status inquiry reports, monthly balances, and other information.
- (4) Accounts with workpeople working piecework.

As regards the cost of the system, the initial outlay will naturally be an item for consideration. In fairly large concerns the cost of carrying on the system should undoubtedly be less than by the old Ledger system. In smaller concerns it may probably be somewhat greater. The cards should be of the best quality obtainable. As regards the cost of *clerical work*, in small or medium sized concerns, no great reduction can be expected over the old system. In large concerns probably a reduction in clerical staff of 10 per cent. to 20 per cent., and sometimes more, will be found possible. There can be no doubt whatever that with the Card System greater neatness and accuracy will be found practicable, and less training necessary, than under the old Ledger system. In fact, the system can be made to work almost automatically; that is, with care, attention, and perseverance.

#### *The Filing of Correspondence.*

The Card System is largely in use for the filing of correspondence with customers, the method usually adopted being as follows:—Each customer has a denoting number, as in the Ledger System. So many numbers are allotted to each drawer or tray. Special cabinets are provided to hold these trays, the trays being arranged in the cabinets in numerical order, or in such other order as may be found convenient for the business. By this means it is known at once where to look for the correspondence with a particular customer. A name card containing the customer's number and name is first placed in its proper tray. As letters are received from customers they are attached by means of paste or gum to the top left-hand corner of the cards, and after each letter follows the press or typed copy of the reply. Later would follow the next letter, also with the press or typed copy reply, and so on. It will thus appear that in the case of each customer the whole correspondence with that customer is bound

together, and the correspondence file can be found in a moment. There is therefore no searching in bundles for old letters, and no reference to the index columns of old press letter books. Further, if the principal or board of directors wishes to see the correspondence with a particular customer, the whole of it can be taken into the board room or the private office at once. The system is useful, when answering a letter from a customer, for reference, in case of need, to the former correspondence. It is not generally considered necessary to place correspondence cabinets in strong-rooms or safes when not in use.

Instead of what is here described as "Name Cards" some firms use folders, or small portfolios, cut to the size of the trays. Into these folders are placed the letters and the replies to them in order of date. This is not any great variation of the system described above, except that the letters are not fastened together. Much more could be said upon the filing of correspondence but space does not permit.

#### *Statements.*

The usual method of posting the Sold Ledger is as follows: Assuming there are sixty entries to be made for the day, the invoices should be arranged in numerical order, and the postings made direct from the invoices. Thus, we will assume, the Ledger clerk has before him the sixty invoices belonging to his particular tray for posting. The order would then be as follows:—

- (1) The invoices are arranged in numerical order.
- (2) The clerk takes out the sixty cards required.
- (3) He posts the sixty entries on the cards.
- (4) He calls over the postings of the sixty entries with the invoices.
- (5) He enters the items on the Customers' Statement Heads.
- (6) He puts back the sixty cards in the tray.

Let us explain No. 5. The Ledger clerk will keep at hand statement forms for every customer in his tray. As he posts the items on to the cards he will, at the same time, enter the items on the statement heads. Thus it will appear that all the customer's statements are always *up to date*. Therefore, at the end of the month or quarter all that has to be done in rendering accounts is to make the concluding entries, examine the statements, and send them out. This is an enormous gain, because it not only saves much harassing and irritating work at the end of each month or quarter, but every customer's statement can always be furnished practically at a moment's notice. It will be understood that, by this system, invoices are written out in duplicate, the duplicates being properly filed for reference, and only the totals of each invoice entered in the day book.



This is sometimes called the Perpetual or "Dade" Ledger System, and it has many points of similarity with the Card System. Briefly, the system may be described as follows:—Instead of cards there are ordinary Loose Ledger leaves, these leaves being ruled in accordance with their special requirements. Here, for instance, is an illustration of a loose leaf.

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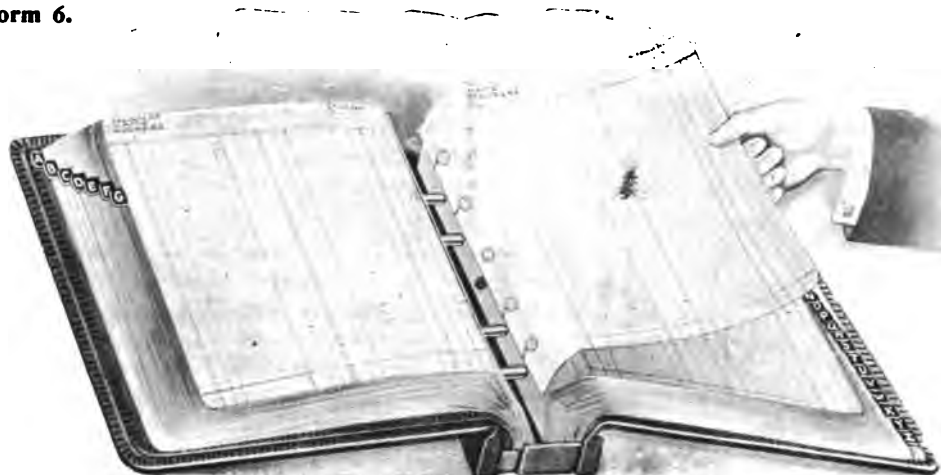
Form 5.



As to whether the book shall be indexed in the form shown in the illustration, or the index be placed at the commencement of the book, as in the case of an ordinary Ledger, is a

matter for the discretion of the proprietor of the business. The following illustration represents the process of taking out one of the leaves or inserting another.

Form 6.



Many firms, who may, perhaps, think the adoption of the Card System too great a revolution, may find the Perpetual Ledger System to answer their requirements. It will be seen without explanation that the Ledger folio of each customer will always be the same. Thus there need never be any alteration in the indexing. When one sheet containing the customer's account is full on both sides, another can

be inserted in its place and the old sheet filed and put away for future reference. As in the Card Ledger System, all "Stock" leaves should be kept under lock and key. A register should be kept of them, and entries made to show the disposition of each card or leaf. Special books for keeping these registers can be obtained. There can be no doubt that the Perpetual Ledger System must mean both a

saving in stationery bills and in clerks' time. Once the initial outlay of the case or binding has been paid, only the cost of the leaves has to be met. This, naturally, is very little more than the cost of the leaves of an ordinary Ledger. When we consider the wear and tear and putting away into safes which ordinary Ledgers have to go through, it must be admitted that they must be well and expensively bound. By the Perpetual System this binding (and also fresh indexes) are dispensed with, and the cost saved. Naturally, the opening of a new Ledger and the continual indexing of new folios involve a very considerable amount of clerical labour. This also is avoided. There is also another advantage in the system, and that is that the accounts in the Ledger can be arranged in any order which may be desired—that is to say, in alphabetical order, in the order of counties or districts, or travellers' grounds, or other-

Form 7.



These binders can be made to hold as many as 1,500 to 2,000 leaves. It may be found useful to leave the used leaves in the original bindings until the audit of them is completed, after which they can be placed in the permanent binders, all the leaves for one name being placed together as in the Card System.

Many firms who have adopted the Card or Loose-Leaf Ledger Systems use also addressographs, adding machines, duplicators, specially constructed copying machines, and other office labour-saving appliances which space does not permit for description in this article.

wise. Thus, supposing the firm has seven travellers, represented by the words "North," "South-East," "South-West," "Lancashire," "Midland," "Wales and Ireland," and "Scotland," then, instead of the Ledger being arranged alphabetically, as shown in Illustration 27, it can be divided into seven parts, each division starting with folio 1. New accounts can be added to each division as they are opened by the travellers. There is another advantage. Let us assume that the seven travellers are all home at the same time, and that they all want to refer to the Ledger Accounts in their districts. These Ledger Accounts can be taken from the binding and each traveller thus be

able to work at his own portion or the book separately. This would also apply to clerks at balancing time. As the Ledger sheets are filled up they are transferred to transfer binders. Here is an illustration.

Much discouragement may be experienced on the first adoption of the systems. But this should not deter you. It oftentimes is found that what is very easy or very simple is very useless or very stupid.

The writer has probably said enough to set traders thinking. That the systems described present enormous advantages cannot be denied; that the number of business firms using them is largely on the increase is certain; but, as has been stated, the adoption of the systems by small concerns should always be well and carefully considered beforehand.

## Obituary.

### Mr. E. M. Sharp, F.C.A.

We regret to announce the death of Mr. Elkanah Mackintosh Sharp, of the firm of Sharp, Parsons & Co., Chartered Accountants, Colmore Row, Birmingham, which took place on the 7th inst. at his residence, Beech Mount,

Wellington Road, Edgbaston. Mr. Sharp had been ailing for about eighteen months and suffered very much from internal trouble. He was born in 1846, and had he lived until Monday next he would have completed his sixtieth year. He commenced his business life in the office of Messrs. Richard Fowler and Sons, land agents, and from there he went to Messrs. Bayfield & Eagles, accountants. At that time his brother, Mr. Luke J. Sharp (who only

recently retired from the position of Official Receiver in Birmingham), was a clerk in the office of the late Mr. George Kinneir, Official Assignee of the Bankruptcy Court, and a vacancy occurring, Mr. E. M. Sharp was given the appointment. There he remained for many years, but when the Court was abolished by the Bankruptcy Act of 1869 he commenced, in partnership with his brother, Mr. L. J. Sharp, as accountants. They soon enjoyed the confidence of the commercial people of Birmingham, and in time built up a large and remunerative practice. In 1883, when the new Bankruptcy Act came into operation, Mr. L. J. Sharp became the Official Receiver, and Mr. E. M. Sharp then continued the business in partnership with Mr. G. C. T. Parsons. During the last twenty years Mr. Sharp was engaged as a professional accountant in some very heavy failures. His ability and assiduity gained for him the respect and esteem of a very large number of business men, limited companies, and banks, and his name as an accountant was appended to the Balance Sheets of very many of the leading commercial firms in the city. He was President of the Birmingham and Midland Society of Chartered Accountants, 1899-1900, 1900-01. He was also Treasurer for about twelve years, having only lately been succeeded in that office by Mr. A. T. Powell. For eighteen years he was churchwarden at Edgbaston Parish Church, and for nearly thirty years he was hon. secretary of the Gem Street Industrial School. Mr. Sharp was a staunch supporter of Warwickshire county cricket, his firm having been hon. auditors to the County Club since its formation. He leaves a widow and family of three sons and two daughters. The funeral took place on the 12th inst. at Edgbaston Parish Church.

### The Sheffield Chartered Accountants Students' Society.

REPORT of the Committee presented to the twenty-third annual general meeting of the Society, held at the Library, Hoole's Chambers, Bank Street, Sheffield, on the 13th June 1906.

#### REPORT AND ACCOUNTS.

Your Committee have pleasure in submitting the twenty-third Annual Report and Statement of Accounts for the year ended 30th of April 1906.

During the year 2 honorary members and 10 ordinary members have resigned and 10 ordinary members have been admitted to the Society, giving a total membership of 113, of whom 57 are honorary and 56 ordinary members.

The average attendance at the ordinary meetings of the Society has been 20, an increase upon the last year of 3.

The following are the programmes of the autumn of 1905 and spring of 1906 sessions:—

1905

Oct. 10 (Tuesday).—Smoking Concert. King's Head Hotel, at 7.45 p.m.

" 18 (Wed.).—Visit to Barnsley Brewery, Barnsley, on the invitation of Henry J. Wells, Esq., who, after the inspection of the brewery, will give a short lecture on Brewery Accounts.

Nov. 1 (Wed.).—Three members will visit Newcastle-upon-Tyne to take part in the Chartered Accountants Students Societies' Mock Shareholders' Meeting.

" 8 (Wed.).—Lecture, "Executorship Accounts," by Mr. James Crake, A.C.A., Hull.

" 15 (Wed.).—Union of Chartered Accountants Students Societies' Mock Shareholders' Meeting, at which three representatives of the Hull Students' Society will be present.

" 29 (Wed.).—Lecture, "Income Tax Administration and Incidence as regarded by Taxpayer." Mr. C. E. Isaacs, London.

Dec. 13 (Wed.).—Lecture, "Some Recent Legislation." Mr. J. Geoffrey Chambers, Solicitor, Sheffield.

1906

Jan. 31 (Wed.).—Lecture, "The Licensing Act." Mr. A. B. Chambers, Solicitor, Sheffield.

Feb. 14 (Wed.).—Lecture, "The Rights of Partners *inter se*." Mr. S. S. Dawson, F.C.A., Liverpool.

" 28 (Wed.).—Debate, "Is Municipal Trading Desirable?" Affirmative: Mr. A. H. Heap, A.C.A.; Negative: Mr. F. C. Young, A.C.A.

Mar. 14 (Wed.).—Mock Arbitration. (Details will be circulated later.)

" 21 (Wed.).—Lecture, "Colliery Accounts." Mr. A. D. Barber, A.C.A., Sheffield.

" 29 (Thurs.).—Lecture, "Some Points on the Duties of a Trustee in Bankruptcy." Mr. A. F. H. Harrop, Solicitor, Sheffield.

April 11 (Wed.).—Social Evening.

The best thanks of the Society are due to the gentlemen who have delivered lectures or opened debates, and the Committee desires to take this opportunity of expressing the same.

It is much to be regretted that, owing to pressure of business, the President has not been able to attend more meetings of the Society, but the Vice-President has generously stepped into any breach caused by his unavoidable absence.

The Committee also desires to thank the President for his kind donation of £5 to the funds of the Society.

The following members of the Society have been successful in the examinations of the Institute during the past year :—

*May 1905—Intermediate.*

T. C. Parkin, Junr., with Mr. T. C. Parkin, A.C.A.

*Final.*

M. Foxon, with Mr. R. L. Foxon, A.C.A.

G. E. Greening, with Mr. G. Franklin, A.C.A.

F. H. Smith, with Mr. W. H. Smith, A.C.A.

H. J. Watson, with Mr. E. E. Carline, A.C.A.

A. L. Wing, with Mr. Wm. Wing, F.C.A.

*November 1905—Intermediate.*

H. H. Tomasson, with Mr. N. W. Burbidge, A.C.A.

C. L. Widlake, with Mr. Wm. Holme, F.C.A.

*Final.*

H. Oswald Bolton, with Mr. A. W. Macredie, F.C.A.

F. Moore, with Mr. J. W. Best, F.C.A.

The Union of C.A. Students' Societies offered prizes for the best essay on "The difference in Constitution and relative advantages of Private Firms and Limited Companies, and the matters of Account involved by a Conversion," as follows :—

First Prize .. ..	£5 5 0
Second Prize .. ..	2 2 0
Third Prize .. ..	1 1 0

In addition to the above, Mr. M. Webster Jenkinson offered a prize of £2 2s. to any member of this Society winning the first prize, £1 1s. if second or third, and the Committee offered a prize of £2 2s. to any member taking any prize in the competition.

The result is as follows :—

- 1st—Mr. Stuart Green, A.C.A., Sheffield.
- 2nd—Mr. E. V. Scholey Pepper, Sheffield.
- 3rd—Mr. Cyril Bird, London.

The Committee, on behalf of the Society, heartily congratulate Mr. Green and Mr. Pepper on their success, especially as Mr. Pepper was also successful in winning the first prize in Messrs. Gee & Co.'s competition in *The Accountants' Journal*.

The prizes will be presented at the annual meeting of the Society.

It is to be hoped that these successes of our members will have the effect of increasing the number of the competitors for these prizes from this Society, this being the first year in which any Sheffielder has been successful.

Seven Committee meetings have been held, and the following are the attendances of the members of the Committee :

Mr. W. J. Furnival, A.C.A. (Chairman) ..	5
„ Cornthwaite, A.C.A. .. ..	7
„ G. E. Greening, A.C.A. .. ..	1
„ H. J. Watson, A.C.A. .. ..	5
„ H. E. Roe .. ..	0
„ J. W. Merryweather .. ..	6
„ W. T. Champion (resigned November last) ..	0
„ L. C. Howlden (elected November last <i>vice</i> Mr. Champion) .. ..	2
Hon. Treasurer .. ..	7
„ Secretary .. ..	7

Mr. Roe's absence has been owing to continued ill-health during the last twelve months.

Mr. Champion was compelled to resign as he has now left Sheffield, and the Committee elected Mr. L. C. Howlden to fill the vacancy.

The mock shareholders' meetings, held under the auspices of the Union of C.A. Students' Societies, proved highly successful, three of our members visiting Newcastle-upon-Tyne, and four members of the Hull S.S. coming to Sheffield.

In both cases the directorate of the company was proved guilty of culpable if not criminal negligence.

The annual football match between the Sheffield Law Students and ourselves, played on the Owlerton Ground (kindly lent by the Directors of the Sheffield Wednesday F.C.), resulted in a victory for our Society by three goals to two. Table of matches played to date :—

		Goals					
		Played	Won	Lost	Drawn	For	Against
Accountants Students	5	..	3	..	1	8	6
Law Students	..	5	..	1	..	3	6

In accordance with Rule 11 the officers and members of the Committee retire, but with the exception of Mr. W. J. Furnival, A.C.A. (Chairman), Mr. G. E. Greening, A.C.A., and Mr. H. Oswald Bolton (Hon. Sec.), who do not seek re-election, all are eligible to be re-appointed.

The accounts duly audited are annexed hereto.

The Committee are pleased to be able to show a continued improvement in the financial position of the Society, there being a favourable balance on the year's working of £1 3s. 8d., in spite of the fact that there has been a considerable amount of extraordinary expenditure for prizes, expenses *re* the mock shareholders' meeting, visit to Barnsley, &c.

The amount now standing to the credit of Capital Account is £9 os. 6d.

W. J. FURNIVAL,  
Chairman of Committee.  
H. OSWALD BOLTON,  
Hon. Secretary.

Dr.

## INCOME AND EXPENDITURE ACCOUNT, for the year ended 30th April 1906.

Cr.

1906		Expenditure			1906		Income			
April 30th.		£	s	d	£	s	d	£	s	d
To Printing, Stationery, and Postages—										
General Printing .. .. .		8	5	11						
Secretary's Postages .. .. .		3	0	0						
					11	5	11			
Lecturers' Fees and Expenses .. .. .					4	14	10			
Working Union .. .. .					2	17	6			
Subscription to Sheffield Society of Chartered										
Accountants for use of Library .. .. .					2	13	0			
Accountants' Journal .. .. .					7	17	9			
Expenses of visit to Barnsley Brewery Co., Lim.		2	1	8						
Less Railway Tickets Sold .. .. .		1	11	8						
							0	10	0	
Honorariums voted to those who attended the										
Mock Shareholders' Meeting at Newcastle ..					3	4	9			
Subscription to "Price and Lanham" Testi-										
monial Fund .. .. .					1	1	0			
Bank Commission, less Interest .. .. .					0	0	7			
Subscription to Accountants' Journal, written off					0	3	0			
Prizes to successful Candidates in Working										
Union Essay Competition .. .. .					4	4	0			
Balance. Excess of Income over Expenditure										
for the year transferred to Capital Account ..					1	3	8			
					£39	16	0			

1906		Income			1906		Income			
April 30th.		£	s	d	£	s	d	£	s	d
By Members' Subscriptions—										
55 at 10/6 each .. .. .		28	17	6						
1 at 5/6 .. .. .		0	5	6						
								29	3	0
Entrance Fees—										
9 at 10/- each .. .. .								4	10	0
Profit on Smoking Concert .. .. .								1	3	0
Donation from the President, F. E. Foster, Esq.								5	0	0

## BALANCE SHEET, 30th April 1906.

<i>Liabilities</i>				<i>Assets</i>			
	£	s	d		£	s	d
To Capital Account as at April 30th 1905 .. .. .	7	16	10	By Furniture as at 30th April 1905 .. .. .	0	10	0
<i>Add Excess of Income over Expenditure for</i>				<i>Outstanding Subscriptions .. .. .</i>	1	16	0
<i>the year.. .. .</i>	1	3	8	<i>Cash at Bankers .. .. .</i>	10	18	6
			9 0 6				
• Prizes <i>re</i> Working Union Essay Competition ..			4 4 0				
			<u>£13 4 6</u>				<u>£13 4 6</u>

We have examined the above Balance Sheet with the books and vouchers, and hereby certify the same as correctly showing the financial position of the Society.

23rd May 1906.

ERNEST W. DUDLEY, } *Hon. Auditors.*  
CHAS. L. WIDLAKE, }

## Sydney Institute of Public Accountants.

At the twelfth annual meeting of the above Institute held in the Library Room of the Institute, 16 O'Connell Street, Mr. F. N. Yarwood (the President), in the chair, there were a good number of the members present, among whom were Messrs. H. B. Allard, J. T. Bowes, H. Dunstan Vane (Vice-President), W. H. Perry, Thos. Pratt, William Robertson, and W. Cullen Ward (Councillors), and Messrs. D. H. Gilfillan, E. E. Haager, Relph, Stevens, Ward, Russell, &c. Apologies were received for unavoidable absence from some members.

The following Report and Accounts were adopted:—

The Council has pleasure in presenting the Twelfth Annual Report.

The accounts for the year, which have been duly audited, show, after writing £38 8s. 4d. off the Furniture and Library, a credit balance of £30 13s. 11d. This has been transferred to the Accumulation Account, which now shows a credit balance of £431 os. 11d.

During the past year a post examination for candidates who came up for the Uniform Examination in October 1904 was held in April 1905, and Mr. F. N. Yarwood attended in Melbourne, together with a representative from the South Australian Institute and one from the Victorian Institute to adjudicate on the answers.

Subsequently the Victorian Institute retired from the Joint Examination Scheme, and since then the Council have pleasure in stating that the scheme under which these Uniform Examinations were held has been remodelled, and that at the present time three other Institutes—The Institute of Accountants in South Australia (Incorporated), the Tasmanian Institute of Accountants, and the Institute of Accountants and Auditors of Western Australia—are co-operating with this Institute in the matter of these examinations.

The examinations under the amended scheme are conducted under a Central Committee to which delegates are appointed by the various Institutes taking part in the examination. The scheme is working well, and promises to be a considerable improvement on the method in vogue hitherto. The division of the Final Examination into Bookkeeping and Auditing in October of each year, and the four legal subjects in the following April, has materially assisted to this end. The fixing up of this scheme entailed a visit by the President (Mr. F. N. Yarwood) to Adelaide to confer with the Council of the Institute there, and there is hope that other Institutes in Australia will take advantage and come into line in connection with the scheme.

The first examination under the new regulations was held in October and comprised Bookkeeping and Auditing, and those successful at that examination will be eligible for examination in the legal subjects in April of this year.

At the above examinations the undermentioned have satisfied the examiners:—In the Intermediate Section: Allan L. Moffat, Douglas Sefton, W. B. Small, J. A. Spencer, H. Russell Crane, S. W. England, Albert H. Dale; and in the

Final Section the following have completed the whole of their examinations: Samuel T. Smith, Percy Cureton, Frank D. Niblett, Rupert A. Cullen Ward; while the following have passed in the First Section of the Final Examination: W. T. Collyer, Jeremiah Roberts, A. W. Oakes, George Twohill, W. Forsythe, R. J. Burns.

The Australian Institute of Public Accountants, foreshadowed in the last year's report, has advanced to a considerable extent, and it is hoped that the current year will see the Institute registered and in full working order. An unofficial meeting of the members of this Institute was held recently at which full details were given with regard to the present position.

It is with very great regret that we have to report the death of Mr. J. C. Taylor, who was the first President of the Institute.

The following gentlemen have passed the necessary examinations, and, being eligible, have been admitted as Associates:—Messrs. Frederick Edgerton Stevens, Frank D. Niblett, Samuel T. Smith, Rupert A. Cullen Ward, James S. Gibb; and one member has been dealt with under Sub-Section F of Clause 26 of the articles of association.

The members retiring from the Council this year are:—Messrs. W. Robertson, H. Dunstan Vane, W. Cullen Ward, all of whom are eligible for re-election.

Mr. D. H. Gilfillan, honorary auditor, retires under Article 70 and is also eligible for re-election.

F. N. YARWOOD,  
*President.*

#### REVENUE ACCOUNT for Year ended 31st March 1906.

	£	s	d	£	s	d
To General Expenses—						
Printing and Stationery .. .. .	19	4	11			
Advertising .. .. .	11	9	0			
Postages and Petties .. .. .	13	15	1			
Rent, Insurance, and Office Cleaning ..	56	5	2			
				100	14	2
Examination Expenses—						
Printing, Advertising, and Examiners' Fees and Expenses .. .. .				96	14	7
Honorarium to Secretary .. .. .				52	10	0
Bad Debts .. .. .				9	9	0
Depreciation—						
Written off Furniture .. .. .	11	15	0			
Library .. .. .	26	13	4			
				38	8	4
				297	16	1
Balance—						
Transferred to Accumulation Account ..				30	13	11
				£328	10	0

	£	s	d	£	s	d
By Entrance Fees—						
3 Fellows at £5 5 0 .. .. .	15	15	0			
5 Associates at 2 2 0 .. .. .	10	10	0			
				26	5	0
Subscriptions—						
23 Fellows at £3 3 0 .. .. .	72	9	0			
30 Associates " 1 1 0 .. .. .	31	10	0			
5 " " 0 10 6 .. .. .	2	12	6			
				106	11	6
Examination Fees—						
11 Candidates at £3 3 0 .. .. .	34	13	0			
14 " " 2 2 0 .. .. .	29	8	0			
26 " " 1 11 6 .. .. .	40	19	0			
73 " " 1 1 0 .. .. .	76	13	0			
2 " " 0 10 6 .. .. .	1	1	0			
				182	14	0
Interest on Savings Bank Deposit ..				8	0	0
Hire of Institute Room .. .. .				4	19	6
				£328	10	0

## BALANCE SHEET at 31st March 1906.

<i>Liabilities.</i>				<i>Assets.</i>			
	£	s	d		£	s	d
Depreciation Reserve .. .. .			178 0 3	Cash at Savings Bank of New South Wales ..	200	0	0
Accumulation Account—				“ Bank of New South Wales .. ..	23	5	10
Balance at 31st March 1905 .. .. .	400	7	0				223 5 10
“ transferred from Revenue Account	30	13	11	Sundry Debtors .. .. .			2 2 0
			431 0 11	Furniture at Cost .. .. .	117	10	0
				Library at Cost .. .. .	266	3	4
							383 13 4
							£609 1 2
			£609 1 2				

F. N. YARWOOD, President.

E. A. HARRIS, Hon. Secretary.

Sydney 4th April 1906.

Audited and found correct.

D. H. GILFILLAN.

The retiring members of the Council were reappointed, and Mr. D. H. Gilfillan was reappointed Honorary Auditor.

Mr. Rex Cullen Ward, on behalf of the Students' Society of the Institute, tendered thanks for the assistance of the parent Institute during the past year, and Mr. Haager (one of the Hon. Secretaries of the Society) supported the same.

The meeting closed with a vote of thanks to the Honorary Secretary of the Institute (Mr. E. A. Harris), who is away from Sydney at present, the Honorary Auditor, and the President for their services during the past year.

### Personal.

MESSRS. KIDSONS, TAYLOR & EVERETT, Chartered Accountants, have removed to 1 Booth Street, Manchester.

### Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, June 8th, was 128, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 64; Deeds of Arrangement registered, 64. The respective

numbers in the corresponding week of last year were: Bankruptcies, 96; Deeds of Arrangement, 77—total, 173; being a decrease of 45. The total number of commercial failures recorded during the 23 weeks of the present year is 3,853; the total number recorded in the corresponding 23 weeks of last year was 4,127, showing a decrease of 274.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, June 8th, was 106. The number in the corresponding week of last year was 165, showing a decrease of 59. The total number filed during the 23 weeks of the present year is 3,466; the total number filed in the corresponding 23 weeks of last year was 3,894, showing a decrease of 428.

### Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, June 8th, amounted to £1,008,588, by way of addition to £1,136,973, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,763,150, showing a decrease of £754,562. The total amount registered during the 23 weeks of the present year was £38,595,217 (in addition to the issues in previous years by the same companies), as compared with £34,426,659 for the corresponding 23 weeks in 1905, showing an increase of £4,168,558.



## Chartered Accountants' Lodge.

WITH reference to our recent announcement to the effect that a Masonic Lodge was in contemplation, to be known as the "Chartered Accountants' Lodge," we are now informed that the Warrant has been issued by the Grand Lodge of England, and that the Grand Secretary, Sir Edward Letchworth, will consecrate the Lodge in the Masonic Temple at the New Gaiety Restaurant on Wednesday, the 27th inst., when Mr. William Plender will be installed as the first Master. The following gentlemen are Founders:—Mr. William Plender, Mr. J. W. Woodthorpe, Mr. F. W. Pixley, Mr. H. Woodburn Kirby, Mr. Paul Bevan, Mr. A. H. Gibson, Mr. Thomas Bowden, Mr. Ernest Edmonds, Mr. Geo. Sneath, Mr. Alfred Page, Mr. J. H. Whadcoat, Mr. J. H. Stephens, Mr. W. H. Fox, Mr. C. Fox, Mr. Arthur A. Whinney, Mr. W. Harris, Mr. John Annan, Mr. Edward A. Moore, Mr. C. Eves, Mr. W. A. Bawden, Mr. T. E. Shuttleworth, Mr. Geo. Franklin, and Mr. A. D. Barber.

## Cost of Executions.

MR. BICKLEY again raised the point affecting the interpretation of County Court rules with regard to the recovery of the cost of unproductive executions. When judgment is given against a defendant it is usual to apply for and obtain immediate execution, and if the debt and costs are not speedily paid bailiffs visit the debtor's premises to make a levy. It is sometimes found that there are no goods to levy upon, and payment is enforced by other means. The point raised is whether the cost of the abortive execution should be added to the original judgment and paid by the debtor. His Honour recently stated that whenever an application was made for the issue of a warrant to recover the costs of a previous abortive execution, the matter was to be brought to his notice in each individual case. Mr. Bickley mentioned a case in order, as he said, that his Honour might give a judgment. The Judge: I told you I would let you know the practice to be adopted. The practice is settled, and a certain form will have to be signed. The Registrar said that the forms were being printed. The form in question requires that the amount for which the warrant was issued and the costs should be stated, also the rent of the premises where the execution was issued, and, further, the reason why such an execution was unproductive. It is also required that the applicant should state the ground on which he considered such execution would be productive.

(*Birmingham Post.*)

ADELPHI THEATRE.—Among the recent successes of Mr. Oscar Asche "The Taming of the Shrew," now being produced at the Adelphi, is undoubtedly one of the greatest. Mr. Asche and Miss Lily Brayton are to be seen at their best, and are ably supported by an unusually strong cast.

HARMSWORTH ENCYCLOPÆDIA.—Parts 33 and 34 have just been published, each consisting of 160 pages profusely illustrated.

## The Profession in Scotland.

### Personal.

Mr. Robert F. Cameron, C.A., 1 Exchange Place, Inverness, intimates that he has assumed Mr. George Forrest, C.A., as a partner, and that the firm will carry on business at the same address under the style of Robert F. Cameron & Forrest.

Messrs. Welsh, Walker & Macpherson, C.A., 33 Cathcart Street, Greenock, have assumed Mr. Thomas Ord Sinclair, C.A., as a partner. There will be no change in the firm name.

Mr. Albert E. R. Copeland, C.A., 196 St. Vincent Street, Glasgow, has assumed Mr. Robert Allan, C.A., as a partner. The style of the firm will be Copeland & Allan.

### Edinburgh Society of Accountants.

At a general meeting of the Edinburgh Society of Accountants held recently, which was largely attended, a special report by the President and Council, dated 11th April 1906, was, after some discussion, approved of, and the following resolution was unanimously adopted:—"The Society is of opinion "that no member should permit or be a party to the use, by "any firm of which he is a partner, of the designation "'Chartered Accountants,' or the letters 'C.A.,' unless all "the partners of the firm are Chartered Accountants."

### Obituary.

The death took place at 31 Stirling Road, Trinity, on the 3rd inst., of Mr. John Walker, C.A., 30 St. Andrew Square, Edinburgh. The deceased gentleman served his apprenticeship with the Messrs. Carter (whose firm is now known as Carter, Greig & Co.), and he was admitted a member of the Edinburgh Society of Accountants in 1876. Shortly afterwards he began business on his own account in partnership with a Mr. Falconer, and on this partnership being dissolved he carried on business for some time alone. Subsequently he assumed Mr. Whyte as partner, the firm being known as Walker & Whyte, and this being still the style of the firm. Mr. Whyte died in 1897, and Mr. Walker continued the business alone until last year, when he assumed

Mr. A. J. J. Brown as partner. The deceased, who was fifty-two years of age, is survived by a widow and daughter. The business is being continued by Mr. Brown.

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## COURT OF SESSION.

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### Edinburgh—First Division.

Before the Lord President, and Lords McLaren, Kinnear, and Pearson.

June 7.

R.N.—Exchequer Cause—Lord Advocate v. Hugh Gibb.

*Underwriters and Income-Tax.*

The Division disposed of this reclaiming note, which brought under review a judgment of Lord Johnston in an information at the instance of the Lord Advocate, as representing the Inland Revenue, against Hugh Gibb, as representative partner of the firm of Cayzer, Irvine & Co., underwriters, Glasgow. The information proceeded upon the footing that the firm were persons in receipt of money, value, profits, or gains of or belonging to other persons, and chargeable under Schedule D of the Income-Tax Act, 16 and 17 Vict., Chap. 34, for the year ending 5th April 1905, and that they were bound to prepare and deliver to the proper official appointed to receive the same a list in writing containing a true and correct statement of all such money, value, profits, or gains, and the name and place of abode or residence of every person to whom the same belonged. The firm were said to have refused or neglected to deliver such a statement when called upon to do so, and to have therefore acted contrary to the provisions of the Income-Tax Act of 1842, and so forfeited the sum of £50. For the defence it was maintained that there was no obligation on the firm or the defender to furnish the list required. Cayzer, Irvine & Co. carry on the business of underwriters on behalf of others. They make up annually in January a separate account for each underwriter for whom they act, and pay over such profits or gains as may be shown on a balance of his account, or retain so much at his credit to meet possible losses. A commission of 10 per cent. is paid to Cayzer, Irvine & Co. on any profit which may accrue on the transaction undertaken by them. In the Outer House Lord Johnston held that the defender was bound to prepare and deliver a true and correct statement giving the name and place of abode of those persons for whom the firm acted as underwriters, but were not bound to furnish a statement of the profits or gains arising to each person. Accordingly, the information was dismissed, but neither party was allowed expenses. The pursuer reclaimed.

The Division recalled the Lord Ordinary's interlocutor, and found that the defender, Gibb, as representing Cayzer, Irvine & Co., was bound under statute to return a list of the names of persons for whom they acted as underwriters, and also a statement of the profits and gains in favour of each in connection with the underwriting transactions; and in respect of the defender's refusal to return such list and statement when required, the Court held that there had been a contravention of the statute, and that a penalty of £50 had been incurred. The Crown was found entitled to expenses both in the Outer House and in the Inner House.

---

### Sheriff Court, Edinburgh.

Before Sheriff-Substitute Graham.

June 4.

Cadbury Brothers, Lim. v. N. G. Wallace.

*Cessio—Married Woman's Liability.*

Sheriff-Substitute Graham has issued his interlocutor in proceedings at the instance of Messrs. Cadbury Brothers, Lim., against Mrs. N. G. Wallace, confectioner, 19 Brandon Terrace, Edinburgh. His Lordship repels the plea or objection stated by the defender that the petition is incompetent in respect that she is a married woman living with her husband, though carrying on a trade or business on her own behalf, and ordains [the] defender to execute a disposition *omnium bonorum* in favour of the trustee appointed for behoof of the creditors. In his note the Sheriff says that a married woman appears to be liable to cessio to the same extent to which she is liable to sequestration. At common law, and apart from statute, a married woman carrying on a trade or business by herself, whose husband is abroad, is liable to diligence and bankruptcy as an ordinary debtor, but it has not yet been decided how far the third section of the Married Women's Property Act, 1877, is to subject her to bankruptcy where she is, while living with her husband, earning her living as a trader or artist. By Section 3 of the Act of 1877 the right of administration of the husband is excluded from any earnings she may make in her business, and such earnings are to be deemed to be settled to her sole and separate use, and her receipts are to be a good discharge. It seems to me, the sheriff concludes, that liability to diligence and bankruptcy as an ordinary debtor must follow the wide privileges of trading conferred on a married woman by the Act of 1877, and that the fact that her husband is living with her does not prevent that result unless it can be shown that he is taking part in the conduct of the business.

An idea of the cost of Parliamentary eloquence may be gleaned from the calculations of a Belgian statistician. If his conclusions are correct, and of general application, we think, in regard to Parliament at least, we shall have henceforth to say, "Brevity is the soul of—economy." It seems that every hour the Belgian Legislature is in session costs the taxpayer £291 8s. 9d.—which works out at 1s. 7d. per second. On this basis the President's pronouncement—"Gentlemen, I declare the session open"—costs about four shillings. Every interlude and interruption, without which no Parliament would be complete, has a cash value. "Laughter," as chronicled occasionally by the jocund Parliamentary reporter, costs some £2 8s. 4d., and simple "cheers" run from 14s. to £1. "Marks of approval or dissent on many benches" varies in value from £1 12s. to £2 8s. Coming to actualities, the statistician says that the "applause" which greeted a recent speech by the Minister of Railways cost the State exactly £2 12s. 4½d., and that on another occasion an unimportant speech of more than three hours' duration by "the bore of the House" cost the country £947 3s. 8d. It is surely the very irony of Parliamentary fate that every earnest advocate of economy costs the country money in proportion to the endurance of his eloquence.

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## Leading Articles.

**The Accounts of Building Land Development Companies.**

THE paper recently read by Mr. PERCY GARRATT, at Cardiff, entitled "Notes on the Accounts of Building Land Development Companies," which we reproduced in our issue of the 19th ult., deals with a subject of considerable interest which has hitherto been somewhat unaccountably neglected by lecturers at Students Societies' meetings.

The distinguishing features of the class of company referred to are stated by the lecturer under four headings, all of which raise questions of special difficulty that require the careful consideration of the auditor. The possibility of outstanding liabilities accruing over a considerable number of years, of which

no *prima facie* disclosure is made in the company's accounts, is sufficiently obvious to call for no detailed comment beyond that it emphasises the importance here—as elsewhere—of a careful scrutiny of the company's Minute Book, and perhaps of documents even more remote from the books of account themselves. With regard to the fact that a development company should declare dividends in the same manner as a trading company—that is, after making due provision for wasting capital—it may be pointed out that there is absolutely no analogy between a development company and a mining or other similar company, to which the lecturer compares it. A mining company derives its receipts from practically the same sources as an ordinary commercial undertaking—*i.e.*, from the sale of goods which are normally regarded as floating assets; and if it is to avoid paying dividends out of capital—a quite unnecessary proceeding so far as the bare requirements of the Companies Acts are concerned—it must make due provision for depreciation, as such, proportionately as the mining property is worked out. With a land company, on the other hand, the receipts are derived from the sale of what, in the majority of other undertakings, are capital assets or fixed assets, and it is thus *prima facie* put upon its guard against applying any portion of its capital towards the payment of a dividend. We do not, however, agree with the lecturer in describing the land of a land development company as a fixed asset. The mere fact that it has been acquired with a view to resale at once places it, it seems to us, in the same category as a floating asset, for the distinction between “fixed” and “floating” has nothing to do with the inherent quality of the asset itself, but is solely a question of the

intention of the undertaking with regard thereto. Lord Justice ROMER held that, while it was improper for such a company to take credit for an assumed rise in the value of its capital assets before arriving at a figure of profit available for dividend, there was nothing to prevent it from writing up the value of its land to give effect to a rise in prices which had actually taken place before arriving at a figure of divisible profits. What applies to a land development company situated in Natal must apply equally to a land development company situated elsewhere, with the proviso that the more settled the country the easier it is to arrive at a reliable valuation of its property, and therefore the less danger is there attending the practice of writing up the value of land prior to an actual realisation. But although, from the point of view of the requirements of the Companies Acts, there would thus appear to be no ground for supposing that a land development company is required to treat its land as a fixed asset, the practical difficulty of dividing unrealised profits, combined with the danger of a fall in values before an advantageous realisation could be effected, will both naturally tend towards encouraging a policy of caution, under which unrealised profits will in all cases be ignored.

Where the difficulty will come in, and where the most pressure is likely to be brought to bear upon the auditor, is where, owing to a recent realisation of land, there are ample moneys available for distribution, consisting in part of profits on sale and in part of the cost price of the land as well. The decision in *Lubbock v. The British Bank of South America, Lim.*, makes it incumbent upon the company only to distribute profits on

the sale of such assets, and not the whole of the proceeds. Those who wish to avoid the expense of an application for the reduction of capital with a view to returning to shareholders funds not required for the purposes of the company may, however, well argue that, applying the decisions in *Bolton v. The Natal Land and Colonisation Company, Lim.*, and of *Foster v. The New Trinidad Lake Asphalt Company, Lim.*, the unrealised assets may be written up, and the profit then shown upon the assets, realised and unrealised, may be safely distributed, provided (as may well be the case if no subsequent investments of capital have occurred) there are sufficient moneys in the coffers of the company to pay away as dividends the full amount of the profits so shown. In view of the decisions referred to there can, we think, be little doubt that profits arrived at upon this basis would be legally distributable, assuming that there was nothing to forbid them in the company's memorandum or articles of association; but the wisdom of paying such dividends would be most questionable in the case of any company which was designed to run upon permanent lines, and not merely for the purpose of developing a single asset and then liquidating.

It very frequently happens, however, as the lecturer pointed out, that sales of land effected under such circumstances are made not for cash, but subject to payment by instalments, upon a plan somewhat similar to that employed by building societies. Obviously, in such an event the unearned interest on future instalments cannot be taken credit for as profits; and, further, a liberal margin would have to be provided for bad debts arising through the failure of the purchasers to keep up their instalments, which would necessitate the company foreclosing upon its mortgage and again taking

possession of its property. In cases where the land is sold under such conditions that a free conveyance is given, the cost of such conveyance to the company and of the accompanying mortgage deed must, of course, be regarded as a set-off against the apparent profit derived from the sale; and inasmuch as such costs must, of course, be paid by the company in any event, until they have been liquidated by instalments, the company cannot be regarded as having received any payment whatever in respect of the land itself.

But the most powerful argument against the assessment of profits upon the principles which we have indicated as being within the bare limits of the law's requirements is that, under all save the most exceptional conditions, such profits cannot be reasonably expected to regularly recur from year to year; which may for practical purposes well be regarded as the ultimate test of what a prudent business man would regard as divisible profits. It is further to be borne in mind that if at a land sale (say) fifty out of one hundred plots of apparently equal value be sold for (say) £200 a-piece, that of itself constitutes no very satisfactory evidence that the unsold plots are really worth £10,000. On the contrary, had there been anyone willing to pay £10,000 for them, or to buy any of the plots at that rate, more than fifty would have been sold. So that, for what it is worth, the result of such a sale must be regarded as evidence that the unsold plots are not of an intrinsic value equal to those that have been sold, however much appearances or deductions might appear to suggest such an idea, but rather as evidence that at a public sale no one was willing to pay two hundred pounds for those particular plots that still

remain upon the company's hands. If the unsold plots were not offered for sale because the company preferred to reserve them until the estate as a whole was in a more advanced state of development, then, of course, the evidence of the prices realised at the sale should be inconclusive one way or the other. It is important to bear in mind, however, that the argument so frequently put forward that any given article is worth the price which has been paid in the open market for another article of a similar description does not apply to land, however it may apply to portable chattels enjoying a freer market.

In cases where a company builds upon its own land prior to sale, the accurate assessment of profits is, of course, a matter of even greater difficulty, inasmuch as it entirely depends upon the judgment with which the expenditure has been incurred whether a return of that expenditure at a profit can be reasonably expected at some future date. It fortunately happens that in the vast majority of cases the land owned by these companies is either freehold or held on lease for so long a term that the question of depreciation may for all practical purposes safely be ignored. As is well known, there is no very appreciable difference between the value of a lease with ninety-nine years unexpired and one with (say) seventy-five years unexpired; but if this applies to leasehold land, as much certainly cannot be said of leasehold buildings, and certainly not of the average type of building erected by a land development company. Apart from the mere question of the deterioration of the fabric, for ordinary residential purposes a new building, or a comparatively new building, will always command a considerably larger rent

than an older building, and its realisable value is, of course, primarily determined by its annual rental value. But even leaving this aspect of the matter—which is, after all, to some extent one of sentiment—upon one side, it may well be questioned whether the average speculative building is worth half its cost at the end of twenty-five years, and this rate of depreciation represents 2 per cent. per annum on the original cost, or practically  $2\frac{1}{2}$  per cent. on the reducing balance. In some cases it is even possible that the fabric will not be worth more than one-fourth of its original cost at the end of twenty-five years, and then the proper rate of depreciation would be 3 per cent. of the original cost, or very nearly 5 per cent. off the reducing annual balance. In all cases, however, these percentages would relate to the cost of building only, and not to the cost of land as well. The depreciation of the land would be determined solely by the length of the lease, and, as we have already pointed out, for the first twenty-five years the question of depreciation of land hardly arises in practice.

These are a few of the more important points that occur to us as a result of reading Mr. GARRATT's interesting paper. Numerous other matters are, however, dealt with therein to which we have not referred, but which will yet be found of considerable value both to the accountant student and to the auditor of an undertaking of this description.

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#### Solicitors and Non-Legal Business.

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OUR contemporary *The Liverpool Courier* is responsible for the statement that the following circular, dated the 7th inst., has been

sent to all the members of the Incorporated Law Society of Liverpool :—

Dear Sir,

A memorial letter signed by representative members of the profession in Liverpool has recently been addressed to the Committee of this Society, inquiring whether in the opinion of the Committee there is any reason why solicitors should not act in any of the following capacities :—

- (a) Trustees in bankruptcy and Receivers,
- (b) Liquidators of companies,
- (c) Trustees under deeds of assignment and for payment of a composition,
- (d) Auctioneers of land.

The Committee have carefully considered the matter, and they have passed a resolution to the effect that there is no reason why a solicitor should not undertake any of the above duties or carry on any other honourable profession or business.

Yours truly,

FINLAY DUN,

*Hon. Secretary.*

10 Cook Street, Liverpool,

7th June 1906.

We understand that this is the Society's rejoinder to the complaint of certain of its members that the Liverpool accountants and auctioneers have encroached upon the domains of the solicitor, and, assuming that there may be any ground for complaint of this description, we cannot imagine a more inefficient and ineffective way of dealing with it. If anyone who is not a solicitor acts as a solicitor, or represents himself as such, he is liable to be prosecuted under the Solicitors' Act; and thus not only is the public duly protected, but also all legal practitioners may have their statutory monopoly safeguarded. When, therefore, there is any ground for complaint that the preserves of the law are being poached, the proper course is for lawyers to pursue their legal remedy, and it seems strange that they, of all men, should require to be reminded of so obvious a fact.

The difficulty, however, that has doubtless been experienced by the Liverpool solicitors is that they desire protection not from the unauthorised invasion of laymen into their own preserves, but against interference in non-legal work which they have been in the habit of performing, in respect of which they have been granted no statutory monopoly for the simple reason that such work lies outside their proper province and ought not in strictness to be undertaken at all. We do not pretend to know the exact position of affairs in the neighbourhood of Liverpool, but there are many provincial towns in which solicitors act as secretaries of companies, insurance agents, debt collectors for trade protection societies, mortgage brokers, money lenders, bankers, and the like, and—although we do not happen to remember any case of a solicitor who actually laid himself out to audit accounts—instances of solicitors acting as auditors for isolated undertakings are by no means unknown. Our only objection to solicitors acting as accountants is that they are not capable of properly discharging the duty they have undertaken, whereas the position that they occupy as solicitors, and therefore as officers of the Court, gives them an altogether fictitious importance in the eyes of an indiscriminating public, which makes their incompetence to discharge these non-legal functions the more deplorable. The unfair competition also no doubt presses hardly upon young accountants; but inasmuch as accountants have no statutory monopoly they must expect competition of all sorts, although perhaps they may feel, not unreasonably, that they ought not to have to look for it from those who, like solicitors, have their own clearly defined line in which competition from outside is impossible.



In the opinion of the Incorporated Law Society of Liverpool it would appear that there is no reason why a solicitor should not act as trustee in bankruptcy, receiver, liquidator, trustee under deeds of assignment, &c., or as an auctioneer of land; and the Committee goes one better and adds that there is no reason why a solicitor should not carry on any other honourable profession or business. One would hardly have expected provincial solicitors to officially describe either accountancy or auctioneering as an "honourable" profession; but as it is obvious that they use the adjective in its popular sense rather than as the term is usually applied by lawyers, it would seem that solicitors in Liverpool are, so far as the local Law Society is concerned, to be left free to make money in any way they can so long as they do not make it dishonourably. We are not quite sure whether the Council at headquarters will adopt quite so broad a view of the scope permitted to practising solicitors, and we think it quite likely that they might object to a solicitor opening a branch business, say, as a pork butcher, without being called upon to describe the business as a "dishonourable" one. With regard, however, to the assumption by solicitors of the right to carry on an accountant's or auctioneer's business, we should hardly have thought that anyone would have seriously disputed the right of a solicitor, along with any other member of the public, to describe himself as an accountant or as an auctioneer. In the existing state of the law anyone is entitled to call himself an accountant, but the assumption of that title does not, of course, *ipso facto* qualify him to discharge the duties of an accountant: and anyone is entitled to sell goods by auction who has paid the necessary duty to the Revenue; but here, again,

a certain amount of knowledge and experience not ordinarily acquired in the offices of even a country solicitor is necessary to the satisfactory discharge of the duties undertaken.

The whole matter amounts to this, therefore, that while the Committee of the Liverpool Incorporated Law Society sees nothing improper in solicitors undertaking work which is ordinarily regarded as the function of an accountant or an auctioneer, it remains to be seen whether solicitors can get anyone to entrust them with such work, and whether, even in that event, it will pay them to undertake it. At this time of day few persons are likely to regard seriously the solicitor who poses as an expert in accounts; and when requiring an auctioneer they will, as a rule, be found to prefer someone with a wider business experience and a greater knowledge of values than is acquired by a study of the law in a country solicitor's office. Then, again, let it be remembered that, unlike the profession of the law, accountancy and auctioneering can only be pursued by those who are willing to accept certain very real liabilities as a penalty for any error of judgment or mistake that may be made by them or by any member of their staff. Solicitors who pose as accountants or as auctioneers without first undergoing any qualifying training will incur these same liabilities in respect of any negligence or want of skill, and it will, we imagine, not be long before they find that there are drawbacks as well as advantages to the undertaking of unfamiliar duties.

Yet, again, it should surely be unnecessary to remind these practitioners that in many cases a very substantial proportion of their work is introduced to them by either accountants or auctioneers. They can hardly expect the continuance of such patronage in

the future if they enter the lists of active opponents. There is scope enough in Liverpool, as elsewhere, for solicitors to make a satisfactory income in the discharge of their legal duties if they bring to bear thereon the necessary qualifications of ability, integrity, and diligence. If any of these qualities are absent, the usurpation of the functions of either the accountant or the auctioneer is hardly likely to make up for the deficiency.

### In re Dawson; Aratboon v. Dawson.

(Weekly Notes, 1906, p. 108.)

A POINT of some interest was decided in this case by Mr. Justice Swinfen-Eady on May 10th last. A testator in his lifetime had entered into an obligation to pay a life annuity to A., and had died bequeathing all his property to trustees in trust for B. for life and after his death for C., an infant. The question raised was how the annuity should be paid as between B., who took the income of the estate, and C., who ultimately took the capital. It would, of course, be possible to work out the rights of parties in such a case by purchasing an annuity for the life of A., and paying for it out of the capital of the testator's estate. The annuity is a liability of the testator's estate which would be properly paid for out of capital. But the parties interested may not always approve of such a purchase. The covenant to pay the annuity is completely fulfilled by payment of the instalments as they become due; the annuitant has no right to payment down of the present value of the annuity; and the parties taking the property may object that on the purchase of an annuity the vendor naturally demands a price which is likely to give him some profit on the transaction; and in any particular case they may consider that the annuitant's life is not a good one, so that there will be a further advantage in paying the instalments of the annuity as they become due. That course being determined on, it is necessary to consider how much of each instalment should be attributed to capital and how much to income. One mode of solving this difficulty, which was proposed, was to apply

the principle laid down by a well-known case, viz., *Allhusen v. Whittell* (1867, L.R. 4 Eq. 295), and to consider each instalment as paid by a portion of capital together with the income produced by that capital since the testator's death. On that principle, if an instalment fell due a year after the testator's death, and simple interest at 4 per cent. were reckoned, it would be paid as to  $\frac{4}{105}$ ths out of income and  $\frac{101}{105}$ ths out of capital, while the next instalment would fall as to  $\frac{4}{105}$ ths on income and  $\frac{101}{105}$ ths on capital. This method would seem to work justice, but the justice would be somewhat dearly bought. Trustees might naturally say that they ought not to be called on to make such elaborate calculations as would thus be required, and ought to be entitled to an accountant's certificate on each occasion; and such a certificate would, of course, entail a fee. The Judge was influenced by this consideration, and he accordingly directed a calculation of the respective values of the life estate and the reversion to be made as at the testator's death, and every instalment to be paid out of income and capital in proportion to these values. There was still likely to be a loss in the way of costs in raising out of capital a number of small sums in dribblets from time to time; but that could not be helped, if the parties insisted on paying the annuity by instalments.

A. D. TYSEN, Barrister-at-Law.

### Weekly Notes.

#### A Point Regarding Proxies.

The recent case of *Burrett v. Gill* points a rather obvious moral. A proxy was sent from America in an envelope addressed to A. B. c/o C. D., and then followed the latter's address. C. D. was the secretary of the company. The address given was that of his office where he carried on business as a Chartered Accountant. The London office of the company was at the same address. Mr. Justice Swinfen-Eady decided that as the instrument had been addressed to A. B. without any reference to the company, to a person not named as an official of the company, at an office not solely belonging to the company, it was not deposited at the office of the company as required by the articles of association, and therefore not valid. The question is somewhat subtle, and, although the argument is clear, the last of Mr. Justice Swinfen-Eady's points seems rather strained.

**Is the Stock  
Exchange out  
of Date?**

A recent issue of *The Financial News* contained an extremely interesting article from the pen of a member of the Stock Exchange, who, seeing the writing on the wall in the shape of stagnant business, sought to find remedies for existing evils. It is at the outset admitted that business is not quiet through lack of dealings, but it is said without hesitation that "the outside, chiefly foreign, banks, the country brokers, the so-called arbitrage houses, and, not least of all, the advertising brokers and the bucket-shops" are at present supplying the needs of the dealing outside public. It is claimed that competition has effected the actual ruin of the broker—everyone for himself for so long as the game will last—*après cela?* Why worry? That is evidently the gist of the argument, and we suppose we must take its truth for granted as the same tale has been told on many occasions. The jobber, not being interested in the commission question, takes no thought about the point, but our contemporary's correspondent pleads earnestly for an alliance between brokers and jobbers for their common good. To expect any reform from the Committee seems hopeless, it is said, and yet one would have thought that much leverage for reform could have been used when the election of the Committee takes place. It is suggested that a fixed scale of commissions should be promulgated, and any departure from such minimum scale be considered a professional misdemeanour. Then the abolition of commission sharing is discussed, but we fear that this is somewhat difficult to prevent. Finally, a plea is put forward to modify or eradicate double commissions, and it is very reasonably argued that the Committee should not only discuss this commission question in an exhaustive manner, but also give members an opportunity of presenting their views during the course of such deliberations. We think a fixed minimum scale of commission would be very much better than the present catch-as-catch-can system. The bucket-shop marks its goods, if we may say so, in plain figures, and there is no trouble on the part of the clients to fix their liability under the purchase, but if the same shares be bought from a member of the House, by the time the commission was fixed (if the client even thought of asking) the opportunity for purchase would have slipped by.

**A Candid Witness** An official of the Board of Inland Revenue, in the course of his examination by the Income Tax Committee, is reported to have

said that, although some 550,000 forms were issued under Schedule D, only two-thirds were returned, and half of those were possibly not accepted. With regard to an extra return for those whose incomes were above £5,000, he thought they would have to disclose all sorts of family changes and history, and, "speaking personally, not as an official, he had preferred not to claim abatement in olden days rather than disclose "his full income"! It seems that there is a little human nature even in an Inland Revenue official.

**Directors' Fees  
and Secret  
Commissions.**

In the Sheffield County Court on the 14th inst. judgment was delivered in the action of *Cheevers v. Chambers & Co., Lim.*, which raised some points of considerable interest. Shortly stated, this was a claim for £150 brought by the plaintiff against the defendant company as remuneration for his services as managing director for a period of nearly a year. The company, on the other hand, counterclaimed for £155 odd as expenses and secret commissions alleged to have been improperly received by the plaintiff. The Deputy Judge held that the counterclaim failed with regard to the £100 received by the plaintiff from the company as travelling expenses, but succeeded as to £47 12s. 8d. secret commissions received by him, and that in consequence, under the articles of association of the company, the plaintiff's position as director had been *ipso facto* vacated, and he forfeited all claims to remuneration.

**The Committee on  
the Companies  
Acts.**

In the House of Commons last week, Sir William Evans-Gordon asked the President of the Board of Trade whether the Committee appointed more than twelve months ago had yet completed its investigations, and whether the date when the report might be expected could be approximately given. The reply given by Mr. Lloyd George was to the effect that the report was already in draft, but he could not give an approximate date for its presentation.

**The New  
Chancery Judge.**

The vacancy caused in the Chancery Division of the High Court of Justice by the promotion of Lord Justice Farwell has been filled by the appointment of Mr. Ralph Neville K.C. The appointment is regarded with very general satisfaction in legal circles, where Mr. Neville has been

widely known for many years past as an extremely able Chancery leader. He was formerly attached to the Court of Mr. Justice Romer, but for some little time past has gone "special." There are also grounds for believing that the new Judge will make an exceptionally valuable addition to the *personnel* of the King's Bench Division, when, as from time to time has been the case of late, it is found necessary for one or more of the Chancery Judges to assist in clearing off steadily increasing arrears upon the common law side. Mr. Neville sat in Parliament in the Liberal interest from 1892-5, and his appointment is noteworthy in that it is, of course, now many years since a High Court Judge has been appointed by a Liberal Lord Chancellor.

#### **The Public Trustee Bill.**

At the annual meeting of the Institute, held on the 2nd ult., it was stated that the Public Trustee Bill introduced into Parliament during this session had been dropped. That this statement was the result of some misunderstanding is sufficiently shown by the fact that the Bill in question passed its second reading in the House of Commons without a division on the 15th inst. This being the case, it behoves all those who are opposed to this further and wholly unnecessary extension of officialism to marshal their forces with a view to attacking the Bill in detail at the Committee stage.

#### **The Bankruptcy Committee and Deeds of Arrangement.**

The letter from Mr. David P. Davies, which appeared in our last issue pre-facing the draft of an amended Deeds of Arrangement Act, will have proved interesting reading to those of our readers who in any way concern themselves with insolvency matters. We propose to take an early opportunity of dealing with our correspondent's suggestions in detail, and in the meantime we shall be glad to receive any suggestions that other of our readers may have to make with regard to this important subject.

#### **The Land Values Taxation, &c. (Scotland) Bill.**

The Institute of Accountants and Actuaries in Glasgow, of which Mr. John Mann, C.A., is the President, and Mr. Alex. Sloan, C.A., the Secretary, has petitioned the House of Commons against the Land Values Taxation, &c. (Scotland) Bill, 1906. As there appears to be not the least chance of this Bill being enacted,

and as in any event it would apply only to Scotland, it appears unnecessary for us to discuss the matter in detail in these columns. Those who are interested in the proposed enactment can, however, doubtless obtain a copy on application to the Secretary of the Glasgow Institute.

#### **The Income-Tax Inquiry.**

The Select Committee of the House of Commons appointed to inquire into the practicability of a scheme of graduated income-tax appears to be realising some of the difficulties that must be overcome before anything approaching a workable scheme can be formulated. On the 11th inst. Mr. Gayler, Chief Inspector of Stamps and Taxes, recited several instances showing the difficulty of forming any working idea of the total income of a man from the size of his house. Among a number of such cases instanced we may mention that of the senior partner of a firm of three partners, who returned an income of £21,500 and lived in a house assessed at £60 per annum. The senior partner in a firm paying tax on £35,000 a year lived in a house valued at £75, whilst the values of the four other partners' houses were £330, £260, £90, and £176 respectively. Perhaps, however, an even more remarkable case was that of a man who for many years lived next door to a Surveyor of Taxes in a house assessed at £60 per annum, whose will was eventually proved at £220,000. Indeed, when the matter is properly considered it seems to us quite unreasonable to assume that there is any necessary connection between income and expenditure, and certainly the statistics of the Bankruptcy Court would support at least one side of this proposition. On the other hand, Mr. A. L. Bowley, whose evidence was that of the skilled statistician, stated that while the assessed value of a house was no criterion of the income of its occupant in a few cases, it was obvious that there was a general relationship between the two. This, as a deliberate statement on the part of an expert, strikes us as being an extraordinarily loose statement. There is some sort of connection between most things, but while doubtless the majority of persons control their expenditure according to their means, there are in most cases many other motives at work as well, and although doubtless there would be some connection between total income and expenditure on house rent, we very much question whether it would be sufficiently close to provide any working guide. Indeed, an inspector of such experience as Mr. Gayler stated that it was impossible to judge whether a house

assessed at £45 a year was or was not the residence of a man who was earning £5,000 a year or more.

**The Bills of  
Exchange Act  
(1882) Amendment  
Bill.**

The Bill introduced by the Attorney-General to amend the Bills of Exchange Act, 1882, was read a second time in the House of Commons last week and referred to the Standing Committee on Law. This measure, which has been already passed three times in the House of Lords, was introduced to correct the effect of a decision of that House in its judicial capacity, that if a crossed cheque was credited by a banker to his customer before he received payment, and if it turned out that the customer was not entitled to the cheque, the banker would be liable for the amount, although he had credited his customer with it in good faith and for that customer's convenience. There can be no question as to the desirability of effecting this alteration, not merely in the interests of bankers—who are, of course, quite capable of defending themselves by discontinuing the highly convenient practice of at once passing crossed cheques to the credit of the customer without waiting for them to be cleared—but also in the interests of commerce generally, for the delay of this accommodation on the part of bankers would prove a very considerable inconvenience in many cases, as, for instance (to mention only one) on Stock Exchange settling days. From the accountant's point of view there can, of course, be no question as to the convenience of credit being given for cheques paid into the bank upon the same day, as in that way the task of verifying the pass book is greatly simplified.

**A New System of  
Account Books.**

We are obliged to our correspondent "Articled Clerk" for drawing our attention to the fact that the system described in our issue of the 9th inst. is not novel, having been referred to so long ago as 1885 in Carter's "Practical Book-keeping." Upon reference to our Correspondence column this week, our readers will perceive a letter from M. Victor Yot, Chief Accountant of the Bank of France, which describes what appears to us to be a very great improvement on Mr. Shumacher's invention, in that it does not necessitate the employment of a loose summary of totals. There is also the further advantage that M. Yot has taken no steps to patent his invention, and it is therefore available for use by all who may care to give it a trial. We may

point out that the plan is even simpler from the manufacturer's point of view than its inventor describes. The leaves of which a book is constructed may be first cut all exactly the same size, and then alternate sheets may be slipped up and down so that each alternative page is slightly higher than its neighbours. The value of this invention for Day Books, Stock Books, and the like, will be at once apparent; but for tabular books it would also possess a specially notable feature—namely, the practical impossibility of errors arising through the carrying forward of totals into the wrong column. Other correspondents refer to this same device—thus demonstrating the difficulty of "inventing" anything—but evidence as to the practical value of the idea in actual use is still indefinite.

**The Dublin  
Corporation and  
its Official  
Auditor.**

Acting upon a resolution passed by the Council of the City of Dublin, the Town Clerk, Mr. Henry Campbell, declined to produce his books and accounts to Mr. J. W. Drury, the Local Government Board Auditor, at the time appointed in a notice previously given in accordance with law. Mr. Drury applied to the King's Bench Division for a mandamus addressed to the Town Clerk, which came before the Lord Chief Baron, Mr. Justice Johnson, and Mr. Justice Gibson, on the 12th inst. The Court at that hearing appears to have been in doubt as to whether it should deal with the application without having the Corporation before it, and adjourned the matter to enable the Corporation to be joined, and also directed the order to be served on the Local Government Board, at the same time expressing the opinion that it was clearly the duty of the Government Department to fight the point rather than leave its official to do so single-handed. As, however, it was clearly shown that the Town Clerk had personally declined to comply with his statutory duties, a peremptory order was made against him to keep the necessary notices relating to the audit exhibited, which order carried costs. On the 16th inst. Mr. Drury again presented himself at the City Treasurer's office for the purpose of endeavouring once more to proceed with the audit, and again met with a refusal. Further developments will be awaited with interest, the more so as it has been stated in the press that the Corporation's reason for refusing to submit its books to Mr. Drury as auditor is on account of certain criticisms which he thought it his duty to make in connection with previous audits. As, however, it has been necessary

for the aid of the Courts to be invoked against the Commissioner of Valuation at Dublin for a mandamus directing him to proceed with the valuation of the City pursuant to the provisions of the Dublin Corporation Act, 1900, it may well be questioned whether any criticisms of the manner in which the individual Government officials may have discharged their duty is at the root of the present dispute.

## Correspondence and Enquiries.

**All communications to the Editor should be by letter only.**

*[We are at all times ready to insert correspondence on matters of interest to the Profession, but we do not of course hold ourselves in any way responsible for the opinions expressed by our correspondents. Correspondence intended for current issue must reach us at the latest by Wednesday afternoon; and must in all cases be accompanied by the name and address of correspondents, not necessarily for publication, but as a guarantee of good faith.]*

### A New System of Account Books.

*(To the Editor of The Accountant.)*

SIR,—In your last issue of the 9th June, under this heading "A New System of Account Books," you explain the principle of the invention of specially constructed account books, whose edges of the pages are cut in steps with a view of suppressing the carrying forward of totals from page to page, especially in Day Books, Stock Books. . . . The system described necessitates the use of a summary for taking over the totals from the Day Book, &c. . . . upon an independent sheet. At the same time I read that you shall be interested if any of our readers can tell you anything upon these device.

I take the liberty of sending you these few lines exposing the solution I have personally given to this practical question of importance.

The principle of my invention rests on a particular disposition in the assemblage of the leaves of account books. Take, for instance, a group of 8 sheets of paper, and fold them in their middle; you thus form a copybook of 16 leaves. Take the sheet (or leaf) No. 9 and suppress it in cutting the paper at a short distance and in a parallel direction to the line of the

middle. Your copybook contains but 15 leaves (or sheets) after this operation.\* Now we shall dispose the leaves of our book in the following way:—The leaves No. 1, 3, 5, 7 (9, 11, 13, 15) shall have their upper edges covering (about one-third of an inch or more) the upper edges of leaves No. 2, 4, 6, 8 (10, 12, 14) of such a distance thought proper. Stitch now the booklet so made up, and form your books with such booklets. It is easy to understand the handling of books of accounts so framed. You *put down* the total of leaf 1 (recto) on the last line of page 2 (recto); you add together *all* the figures of leaf 1 (verso) and leaf 2 (recto), and *put up* the total on the first line of the leaf 3 (recto), and so on, the totals going by turns from the *lower* part of *even* pages to the *upper* part of odd pages. In this way you prevent the carrying forward and its risks. You can remark that I do not want at all any slip or limp book for gathering partial totals; my additions are always up to date.

This device can be applied to many kinds of books, but, unfortunately, the Ledgers must be excepted, or nearly.

I give willingly my invention to the brotherhood of accountancy.

Yours faithfully,

VICTOR YOT,

*Chief Accountant of the Bank of France.*

*Paris, 13th of June 1906.*

\* If we number again our pages we must remark the new disposition of the old numbers from No. 9.

Old numbers—1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.  
New .. —1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.

*(To the Editor of The Accountant.)*

SIR,—Referring to the new style of account books, mentioned in your issues of 9th and 16th insts.

The idea is not really a new one, although I have never seen it used in this country.

It is not the same as mentioned by your correspondent, as I shall show.

The sheets (which are of equal size) are arranged so that the top and bottom of each alternate sheet projects slightly above the others so as to expose the totals.

Page 1 is added up and the total placed at top of page 3. Page 2 is added down and the total placed at

bottom of same sheet. Page 3 (which contains total of page 1 at top) is added down, and the combined total placed at bottom of page 5. Page 4 (which, when turned, exposes total of page 2 at bottom) is added up with this total, and the combined total placed at top of same page. Page 5 (which contains total of page 3 at bottom) is added up, and the combined total placed at top of page 7; and so on.

As will be seen, there is no carrying forward totals, consequently the chances of errors are minimised.

I enclose diagrams.

I remain, yours faithfully,

ARTHUR McVICKER.

Belfast, June 19th 1906.

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(To the Editor of *The Accountant*.)

SIR,—With reference to your explanation of the new system of account books in your Weekly Note of the 9th inst., it is not quite clear how the addition of the left-hand side of the page is brought into the total, unless it is carried forward in the usual way to the top of the right-hand page.

A better and simpler way, and one which works very well in practice, especially where a large number of analysis columns are continued across the whole folio, is as follows:—Right-hand page. Cut away the bottom of the first and the top of the second right-hand page, and so on alternately.

When the addition of the first right-hand page is made, it is thus placed on the bottom line of the following right-hand page, which, instead of being added in the usual way, is added upwards; the total of both pages being thus placed on the top of the third right-hand page, the top of the second being cut away as already stated, and so on continuously.

With regard to the left-hand pages the first addition will be made at the foot in the usual way, and when the right-hand page (cut away at the bottom) is turned over, the total, together with the items on the second left-hand page, is added upwards, and the resulting total placed on the top line, which total will again show through on the second right-hand page, cut away at the top, being turned over.

Yours faithfully,

Chester, 19th June 1906. COOK & LEATHER.

### The Future of Articled Clerks.

(To the Editor of *The Accountant*.)

SIR,—In your leading article under the above head in to-day's issue of *The Accountant*, in discussing the question of limiting the number of articled clerks which each practitioner is entitled to take, you have not called attention to the fact that if there is no such limitation it is open to a member of a particular Institute or Society who may have little or no practice to set himself deliberately to work to attract hordes of articled clerks by offering to take them for a small premium, and then at the end of the term grant to each the necessary certificate of service; a pupil farm in fact, in a bad case, and in others bearing varying degrees of likeness to this form of enterprise, which, by the way, it would be almost impossible to convict and quash.

Yours truly,

London 16th June 1906.

P. D. LEAKE.

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### Reviews.

#### Early Stages of Preparation for the Accountancy Papers of the Intermediate.

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By ARTHUR E. CUTFORTH, A.C.A.

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London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 2s. 6d. net.

While the volume before us is scarcely an original work, it presents certain features which will doubtless prove useful to the junior accountant student who is desirous of attaining to the standard set at the Intermediate Examination with a minimum expenditure of trouble. It takes the form of a series of notes, and includes a selection of classified questions set at the Institute's Examinations in the past. The methods of accounting described appear to be all strictly orthodox, and accordingly the book may be recommended as a preface to more serious study.

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#### Bookkeeping for Solicitors.

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By L. WHITTEM HAWKINS, A.C.A.

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London, 1906: Henry Good & Son, 12 Moorgate Street, E.C. Price 3s. 6d. net.

Within the comparatively short space of some 63 pages the author describes a system of bookkeeping for solicitors

which is an interesting addition to previous works upon the subject. With the exception, however, of some useful suggestions with regard to the building up of material for the preparation of bills of cost, there is not much that is novel. However, a full treatment of the subject in so short a treatise is, of course, scarcely to be expected.

### **The Concise Interest Calculator.**

By A. M. CAMPBELL.

London, 1906: Crosby Lockwood & Son, 7 Stationers' Hall Court, E.C. Price 2s. 6d. net.

This work gives, in popular form, the interest in pounds, shillings, pence, and fractions of a penny represented by all products up to five thousand. It will accordingly be found of the greatest value to those who have occasion to make frequent calculations of interest by this method. The tables—each of which occupies a separate page, and is therefore quite clear and distinct—are for interest at 1, 1½, 2, 2½, 3, 3½, 3¾, 4, 4½, 4¾, and 5 per cent. A new, simple, and easily remembered rule is given for the ready division of money by 365, thus enabling a day's income or interest to be speedily ascertained where necessary. A concise time-table for the calculation of the number of days between one date and another adds to the completeness of this handbook, which is substantially bound in a form suitable for desk use.

## **The Depreciation of Plant and Machinery**

By H. STANLEY GARRY, C.A.

A PAPER read before the Nottingham section of the Society of Chemical Industry at Nottingham on Wednesday, March 28th 1905, Mr. J. M. C. Paton in the chair.

The subject of depreciation is one to which increasing attention is now being paid, and there is, perhaps, no class to whom it appeals more forcibly than those connected with chemical industries. It is a subject, moreover, which, while generally accepted in principle, has given rise to great divergence of opinion in details. Some considerable confusion exists, however, through a want of clearness in definition, and it will be well, therefore, in bringing this subject before you for discussion to clearly define, in the first place, what is intended to be covered by the word "Depreciation."

It is now generally recognised that the wastage of capital invested in plant and machinery is as much a working expense as the labour which operates it, and forms an equally definite part of the cost of production. It is also recognised that this wastage proceeds from a variety of causes differing in effect. We may enumerate these as follows:—

*Wastage by Deterioration.*—While a machine or plant may be renewed and repaired in part, and may be made practically efficient in working, there is a slow but inevitable depreciation taking place, which sooner or later extinguishes its capital value.

*Wastage by Obsolescence.*—Under this head the plant or machinery may be rendered obsolete by reason of its being superseded by an improved type of machine, or partially by reduction in the price after purchase, or by scientific discovery which may render the whole, or any part of a plant, obsolete, owing to the changes in process or manufacture.

These divisions are practically final in their effect.

The term "depreciation" is also used to cover an annual provision in anticipation of the expense of the renewal of the machinery and plant at some future period. Some authorities would carry the matter still further, and include under the head of depreciation a provision against the possible diminished value of the plant and machinery which may occur by reason of the changes in markets and trade. In some cases the life of machinery and plant may be dependent on the period of a patent. These, however, are matters which are, perhaps, more properly dealt with in the light of reserves, to be provided for before distribution of profits, and are not risks which affect solely the plant, but also the other items of a Balance Sheet.

We have, therefore, to consider an annual charge for depreciation to provide for (1) Deterioration, (2) Renewals, (3) Obsolescence. I purpose dealing here with the subject of depreciation under these heads as affecting (1) Cost of Production, (2) Income-tax, (3) Fire Insurance.

With regard to the two primary heads of deterioration and obsolescence, we may describe the effect of these on the life of the plant as deterioration, or death from natural causes, and obsolescence as accidental death.

This illustration is, perhaps, homely, but if you will consider it in the light of insurance you will more readily appreciate the difference in the risks and the annual premium involved therein.

*Residual Value.*—In dealing with the estimated life of plant and machinery we have to take into account the residual value of the machinery or plant when its period of usefulness has expired, and in dealing with plant of a special nature it may be generally assumed that, in proportion to its special character, its residual value will be low.



In plant of a general character—as engines, boilers, shafting, pulleys, &c.—in the event of displacement its residual value will be high.

*Method.*—In like manner, when we come to deal with the plant as a whole for the purpose of assessing the annual provision for depreciation, we find that the considerations affecting deterioration, renewals, and obsolescence differ greatly according to the character of the plant.

There are two extreme methods of valuation—

(1) The method of assuming an average percentage rate covering the whole plant of, say, 5 to 7½ per cent. on the book value.

(2) The individual valuation of each machine, and the writing off of the detailed differences.

Both these methods are faulty. In the first method the result is hazardous, as the percentage may be assumed on a proportion of general and special plant which may vary considerably afterwards. In the second place, the detail is very considerable. It has to be done at a time of pressure, and if left to other hands than that of a principal the results are generally too favourable.

In arriving at a basis, therefore, for the settlement of a depreciation charge it will be found generally desirable to classify the plant, and by taking the plant and machinery in each department, and abstracting the items of each under five or six classes, we shall get, in the first place, a departmental separation, and, secondly, a classification under each department of, say:—

*Motive Power.*—Boiler, engines, &c.

*Prime Movers.*—Shafting, pulleys, and transmitters.

*Process Plant.*—Fixed, wearable, loose.

*Accessory.*—Railway trucks, weighing machines, travellers, cranes, and the like.

By leaving space in each department inventory we can provide for additions, and by having loose sheets with columns for abstracting we can economise in re-writing.

Having obtained our totals thus, we can then apply to each department and sub-division a separate rate in respect of deterioration, obsolescence, and renewals, based on our experience. The particulars thus obtained will also afford a basis for the charges in our Cost Sheets, as we shall thus obtain a departmental depreciation charge. We can then adopt a fixed rate.

*Diminishing Value.*—Before we can proceed to establish a percentage rate on these classes of plant we must settle the basis on which the rates are to be calculated.

For some years the basis of the diminished value obtained by the writing off of the annual depreciation charge has been generally adopted, but during the last few years there has been a tendency to revert to the basis of original cost.

For instance, a rate of 10 per cent. on the original cost will exhaust the value in ten annual instalments, but a rate of about 16½ per cent. would be required to exhaust the value in the ten years, if calculated on the diminishing value remaining after the deduction of depreciation in each year.

The argument in favour of basing the calculation on the diminishing value is that the sums written off in the earlier years were greater when the repairs were small, and that this tended to equalise matters. Too often, however, the two factors of rate and basis have not been settled together, and in consequence the adoption of the basis of diminishing value has had the effect of leaving a considerable value in the books when the plant has disappeared.

For instance, a 5 per cent. rate generally carries the impression of a twenty years' life, yet taking £100 as cost, and writing off on the diminishing value, the balance left at the end of the twentieth year is £37 14s. We cannot assume that the residual value in the plant, after twenty years' service, would be a third of the value, and it will be seen that there is room here for considerable error. Not only so, but if we adopt original cost the position is much clearer for any revision of the rate at any subsequent period.

*Depreciation Rates.*—Dealing with these sub-divisions of the plant in order, we have:—

*Motive Power, Boilers, Engines, &c.*—Some authorities place the depreciation on engines as high as 12½ per cent. and boilers at 10 to 15 per cent. Much depends on the stress of working and the water. Mathieson places the life of a boiler at fifteen years, with renewal of the furnace at the end of ten years, and recommends a rate of 7½ per cent. per annum on the diminishing value on this class, no provision being made for obsolescence. This is, however, an extreme view.

*Prime Movers.*—Shafting, pulleys, and the plant under this head have, as a rule, a high residual value, even if displaced, and probably a rate of 5 per cent. will be sufficient provision. Belting should be classified as loose tools. In this class, authorities would recommend the adoption of a rate of 5 per cent., which may be divided into 3 per cent. for deterioration and a renewal rate of 2 per cent. No provision for obsolescence is made herein.

*Process Plant Fixed.*—Under this head we would place all heavy process plant, the wearable and renewal portions of which are classified under their separate heading. The deterioration would then be met by a rate of 2½ per cent., the renewal rate at 2½ per cent. An obsolescence rate dependent on the nature of the processes.

*Process Plant Wearable.*—Under our classification we have already dealt with the exteriors of this plant and we have, therefore, to provide a heavy renewal rate. By the

dissection of this plant under the shop totals we shall have already secured the separation of the different process plants and can readily apply to each shop total a distinctive rate for renewals applicable to its character and requirements. This will be readily based on experience.

*Process Plant Loose.*—In the case of loose tools, the valuation yearly gives the most reliable results. In some cases there is an annual increase in this class, but this should verify itself. It is to be remembered that at a going-concern valuation this cannot, in the nature of the plant, work out at much more than half the original cost value.

*Accessory Plant.*—In this case we have a high residual value due to general utility, and consequently a rate for deterioration of  $2\frac{1}{2}$  per cent. and a renewal rate of  $2\frac{1}{2}$  per cent. should suffice.

*Horses, Carts, Harness, &c.*—The risks and depreciation on this class are too great to include in any average rate. The treatment accorded to loose tools of revaluation annually gives, probably, the best results.

*Depreciation and Income-tax.*—In order to avoid repetition, and as the problems in connection with income-tax and fire insurance are mainly connected with the rate of depreciation, it will be well to deal, at this stage, with these aspects of the subject. It is to be noted, in the first place, that from the very earliest periods of income-tax assessment the law has always dragged far behind its administration in regard to the allowance of depreciation.

The Report of the Departmental Committee on Income-tax, issued in June 1905, states that the Committee are of opinion that no substantial change is called for in respect to the allowances for depreciation, a conclusion which could only be expected from the official character of the Committee, and which is further evidenced by their opinion that the income-tax, as a whole, is levied with a minimum of friction and a maximum of result. The labours of the Committee have, however, provided evidence of the sharp contrast with which this subject is viewed from the official and commercial standpoints. The official standpoint is summed up by an official witness in the statement that the income-tax is a tax on income and not on profits. The commercial standpoint, on the other hand, is summed up by a commercial witness in the statement that income-tax should be levied only on profits distributed in dividends as the basis of actual income.

The rate of depreciation allowed under the Income-tax Acts differs considerably in different localities, a result which is stated to be due to a want of knowledge on the part of manufacturers as to their rights. It would certainly appear that there is considerable scope on the part of somebody representative of the chemical industries to take up the question of depreciation, and to obtain the most-

favoured nation clause in the assessments with regard to this.

For instance, the rate of depreciation allowed to engineers in Leicester is  $7\frac{1}{2}$  per cent. on the full value, while in Cardiff the rate is only 5 per cent. on the diminished value. Hosiery machinery in Leicester obtains  $7\frac{1}{2}$  per cent., as against 5 per cent. on lace machinery in Nottingham. Dyers' machinery in Leicester can get  $10\frac{1}{2}$  per cent., if justified on inquiry. Generally speaking, a distinction is made between motive power and process plant, and the general practice assumes 5 per cent. on motive power and  $7\frac{1}{2}$  per cent. to 10 per cent. on process plant. The foregoing allowances are, however, in respect of our two headings of Deterioration and Renewals.

With regard to obsolescence, there appears to be no annual allowance at present possible in respect of this, but where claims are made specifically under this head an allowance is made from the assessment for plant which is scrapped to the full amount at which the same stood in the books at the previous stocktaking.

With regard to horses, no allowance is made for these, but the full cost of replacement is to be charged as they occur.

*Fixtures.*—No allowance is made for depreciation on fixtures, unless these are included under the head of plant. Any replacements are allowed in full against the year's working.

It is to be noted, as evidence of the interest now taken in securing the allowances for depreciation, that whereas in the year 1893-4 the depreciation allowances were only £4,109,207, they have steadily increased, until in 1902-3 they have reached £12,707,580.

The arguments used in connection with depreciation as regards income-tax may be regarded somewhat as special pleading, but it may be of interest to summarise the grounds specified by the Associated Chambers of Commerce in 1897 for an increase in the rate of allowance.

- (1) That machines become obsolete much more quickly to-day than formerly.
- (2) That the value of machines diminishes more rapidly.
- (3) That the first purchasers pay a heavy premium on new machines, and, after a year or two, could purchase superior machines at half original price.
- (4) That machinery is worked at higher speed, wears out sooner, and is more rapidly depreciated to-day than formerly.

With regard to the basis of diminishing value, it is to be noted that the Inland Revenue authorities have now reverted in a number of cases to the basis of original cost, and that where, say, 5 per cent. is allowed on original

cost, there is often an alternative rate of  $7\frac{1}{2}$  per cent. allowed on the diminishing value.

*Renewals.*—The practice adopted by the income-tax authorities provides for the charging up of renewals to Capital Account where depreciation is allowed, and they usually decline to allow both renewals and depreciation as a charge against the year's profits. The result is to treat renewals as capital expenditure, which in turn are subject to depreciation at the rate agreed on. If we take Mathieson's example of the life of a boiler at fifteen years, at the end of ten years of which we have to renew the furnaces, it will be seen that by charging renewals to capital we can only provide for 25 per cent. of the cost of the renewal before the expiration of the life period. Therefore, if we are to charge renewals to capital, it is evident that in our calculation of the rate of depreciation we must include the provision for renewals along with deterioration.

The tendency to-day is to separate renewals from depreciation, and to provide a fixed sum annually against renewals and repairs, charging the outlay each year under both these heads against the sum thus accumulated, and leaving depreciation to include deterioration and obsolescence only.

*Fire Insurance and Depreciation.*—The point has been mentioned that in the case of writing down machinery and plant by an increased rate of depreciation, the value in the case of a fire would be affected in the claim for replacement.

Upon inquiry I am informed that it is usual, in some offices, to append a declaration on the face of the policy that the depreciation written off in the books of the business shall not be taken for the purpose of assessing a fire loss. I am also informed that the assured is covered for the value of the plant at the time of the fire, and that the original cost of the plant, less depreciation, is not necessarily the basis of the claim.

There does not appear to be any scale of depreciation in force for the different kinds of plant recognised by the insurance companies, but as these losses are generally settled as between the assessors and surveyors, acting for both parties, or failing their agreement by arbitration, no special rates are applicable, but each case is settled on its merits. The principal factor appears to be the possession of definite and specific information on the value and cost of the plant, and, so far as I have been able to gather, the rate of depreciation adopted by the insurer does not in any way govern the claim in case of fire.

It is to be noted that it is a general provision in fire insurances and policies that the company may elect to replace the plant. I have not been able to discover any

instance where this has been done, and probably it was never intended as other than a protection to the company.

Turning back to the consideration of the subject generally, we have now dealt with the adoption of rates as regards cost purposes, we have compared the rates allowed for income-tax purposes, and we shall probably have arrived at the conclusion that the allowances for income-tax are in no way to be regarded as a standard of the depreciation rates necessary for business purposes.

There exists some considerable controversy as to the proper authority to fix the rate of depreciation. One engineering author considers it unfortunate that the subject of depreciation is generally settled by the auditors, and claims that only an engineer can understand it. A similar claim is put forward by professional machinery valuers, on the ground of their independent position and general trade knowledge. The engineer is, no doubt, the best authority on deterioration. The chemist (as manager) is probably the best authority on renewals and probably both for obsolescence, while for financial considerations the auditors take the first place.

In the evidence given by Mr. Arthur Chamberlain, of Birmingham, representing the Birmingham Chamber of Commerce, before the Income-tax Committee, he states, somewhat emphatically, that he would prefer to be guided by the financial expert on the subject of depreciation rather than by either his engineer or a professional machinery valuer, on the ground that the true test of the value of the plant is its earning power.

This brings us to the consideration of my last point :

*Financial Depreciation.*—You will, perhaps, remember that in the opening remarks we referred to the diminished value of machinery, due to the changes in markets and trade, which include the action of foreign tariffs.

We have already dealt with deterioration, renewals, and obsolescence, and we have still to take a general survey of the plant and machinery item with regard to its position from the point of view of earning power.

The argument put forward is that the plant and machinery asset tends to increase as time goes on, until it obtains an undue and predominating position, that as profits always tend to a minimum the value of the plant and machinery item in all businesses requires to be steadily diminished if the ratio of profits to capital is to be maintained in future years.

From this point of view the ideal condition would be, if we take the case of a new plant, that the Capital Account is to be closed immediately the installation is completed. After that all additions, renewals, and repairs are to be provided out of profits, and, in addition, the value of the asset is to be written down annually.

The answer to this is that if this ideal of depreciation were to be seriously proposed, it would be very few businesses which could be carried on. The reply is that in the history of the great number of businesses which have disappeared, their ruin began when the value of their plant, machinery, and buildings steadily increased, even although their productive capacity followed. That the insufficient depreciation was a more potent factor in their downfall than either prices or markets. That prices and markets are dependent on new machinery, and that the obtaining of new machinery depends primarily on the sufficiency of the depreciation.

In this connection, the rates of depreciation in force in the United States would appear to be greater than in this country, and that there are not wanting prophets who trace the alleged falling off in the position of the English manufacturer in the world's market due primarily to the insufficient depreciation of plant.

In conclusion, I have endeavoured to put before you in as brief a form as possible a summary of the opinion of authorities to-day on this subject. There is a tendency to-day to allow a larger provision for depreciation than was formerly deemed necessary, and to admit the importance of depreciation of plant and machinery in industrial economics to a degree never contemplated by a past generation.

### **Birmingham Chartered Accountant Students' Society.**

THE twenty-fourth annual general meeting was held on Tuesday, the 15th ult., at the Chartered Accountants' Library, 8 Newhall Street, Birmingham. There was a large attendance of members. The following are the

#### **REPORT AND ACCOUNTS.**

It is with very great pleasure that your Committee present their twenty-fourth annual report, as they believe that the work done by the Society during the past year has been highly satisfactory, and that the reputation and standard of previous years have been fully maintained.

The number of members on the 30th April 1905 was 301. During the past year 42 ordinary members have been elected, an increase of 25 over last year, and 73 members have resigned or been struck off the list for non-payment of their subscriptions, so that the present membership totals 270, consisting of 146 honorary members (of whom 42 are not in practice) and 124 ordinary members.

The average attendance at the 14 ordinary meetings has been 38, an increase of eight over last year. The attendance at the mock shareholders' meeting was 59, and at the

joint debate with the Birmingham Law Students' Society 47.

The following is a list of the meetings:—

#### *Autumn Session, 1905.*

Lecture: "Methods of Administering the Estates of Deceased Insolvents." By Mr. D. F. de l'Hoste Ranking, M.A., LL.D. Chairman—Mr. Arthur J. West, F.C.A. (a Vice-President).

Joint Working Union Mock Shareholders' Meeting. Visit of Birmingham Chartered Accountant Students' Society representatives to Nottingham.

Discussion on the May, 1905, Final and Intermediate Examination Papers. Chairman—Mr. J. W. G. Hill, F.C.A.

Social Address (illustrated by lantern slides): "Views of the Towns and Cities of Canada." By Mr. P. B. Ball, Commercial Agent for the Canadian Government. Chairman—Mr. Howard Heaton, F.C.A.

Joint Working Union Mock Shareholders' Meeting. Visit of Bristol Chartered Accountants Students' Society representatives to Birmingham. Chairman—Mr. W. S. Aston, F.C.A. (a Vice-President).

Paper: "Income-tax Assessment and Accounts for Income-tax Purposes." By Mr. R. H. Johnston (a member of the Committee), to be followed by a discussion. Chairman—Mr. A. H. Gibson, F.C.A.

Lecture: "A few Points for consideration outside the usual Examination Course." By Mr. Theodore D. Neal, A.C.A. Chairman—Mr. E. B. Winn, F.C.A.

Joint Dinner (with the Birmingham and Midland Society of Chartered Accountants) to Sir Walter N. Fisher. Presided over by Mr. Howard Heaton, F.C.A.

#### *Spring Session, 1906.*

Lecture: "The Rights of Partners *inter se*." By Mr. S. S. Dawson, F.C.A., F.S.I.S., F.S.S. Chairman—Mr. A. J. Cudworth, F.C.A.

Lecture: "Brewery Accounts and Audits." By Mr. Herbert Lanham, A.C.A. Chairman—Mr. J. Evans Rubery, F.C.A.

"Hat Night." Chairman—Mr. J. W. Hinks, A.C.A.

Debate: "That the Acts relating to income-tax as they are "at present administered, and the methods adopted in "Assessing and Collecting the Tax, should be drastic "ally amended." Chairman—Mr. G. C. T. Parsons, F.C.A.

Joint Debate with the Birmingham Law Students' Society: "That this meeting approves of Earl Roberts' Scheme for Compulsory Military Training." Chairman—Mr. Frank S. Pearson, LL.B.

Lecture: "Debentures." By Mr. Edward Evershed, B.A.  
Chairman—Mr. W. Randle, F.C.A.

Lecture: "The Accounts relating to the formation and reorganisation of Limited Companies." By Mr. J. Chapman, A.C.A. Chairman—Mr. J. Whitehill, A.C.A. (The lecturer failed to carry out his engagement.)

President's Address: "The Future of Accountancy."

Annual Meeting. The President, Mr. Eric M. Carter, F.C.A. in the chair.

The Society desire to thank Mr. J. Howard Heaton, F.C.A., and other members of the Classes Sub-Committee for the great amount of trouble they have taken in inaugurating and carrying out the new Tuition Scheme, which may be considered to have been very successful.

Twenty law lectures have been conducted for the Intermediate Examination (average attendance 28.6), and 20 for the Final Examination (average attendance 10.4), by Mr. D. F. de l'Hoste Ranking, M.A., LL.D.

Seventeen bookkeeping lectures have been conducted by Mr. S. S. Dawson, F.C.A., for the Final Examination (average attendance 10.4), and 17 for the Intermediate Examination, by Mr. W. H. Lovatt, A.C.A. (average attendance 26.3). The financial aspect of the scheme has not resulted quite so well as anticipated, for after allowing for £40 grant from the Institute and £25 each from the Birmingham and Midland Society of Chartered Accountants and the Birmingham Chartered Accountant Students' Society, there is still a deficiency of some £30 to £40. However, if members will continue to interest themselves in, and persuade students to join the classes when they enter upon their articles of clerkship, there is little doubt

that in a year or two's time the scheme will be well able to pay its own way.

The thanks of the Society are due to Mr. Eric M. Carter, F.C.A., for having acted as President and for delivering his address on April 10th.

The Society also thank the Vice-Presidents and other gentlemen who have delivered lectures or presided over the Society's meetings during the year.

The Committee wish to express, on behalf of the Society, their thanks to the Birmingham and Midland Society for their kindness in allowing members of this Society to refer to books in their library.

The number of Committee meetings held during the year was nine, at which the average attendance was eight.

During the past year 13 members of the Society have passed the Final, and 14 the Intermediate Examination of the Institute.

In December 1905 Mr. G. F. Garnsey, of Messrs. Muras, Harries & Higginson, obtained first prize and certificate of merit in the Final Examination, and also the prize offered by the Society; Mr. H. F. Farrow, of Messrs. Gibson & Ashford, was placed third in order of merit for the Intermediate Examination; and Mr. W. E. Littleboy, of Messrs. R. L. Impey, Cudworth & Lakin-Smith, was placed ninth in order of merit for the same examination.

The accounts for the year, duly audited, are annexed, and show an excess of expenditure over income of £11 16s. 10d., being an improvement of £18 4s. 2d. upon last year's figures.

ALLEN K. EDWARDS,  
*Hon. Secretary.*

Dr.

INCOME AND EXPENDITURE ACCOUNT from 1st May 1905 to 30th April 1906.

Cr.

Expenditure.				Income.			
	£	s	d		£	s	d
To Rent .. .. .	65	0	0	By Subscriptions:—			
„ Transactions .. .. .	32	0	0	Honorary Members .. .. .	109	4	0
„ Printing and Stationery .. .. .	24	16	6	Ditto not in Practice .. .. .	18	18	0
„ Postages and Incidentals .. .. .	15	19	5	Ordinary Members .. .. .	74	2	6
„ Contribution to Expenses of Joint Dinner .. .. .	4	4	3				202 4 6
„ Lecturers' Travelling Expenses, &c. . . .	3	17	4	„ Entrance Fees .. .. .			10 15 0
„ Contribution to Expenses of Tuition Classes .. .. .	25	17	5	„ Interest on Deposit Account .. .. .			1 18 4
„ Christmas Box to Curator .. .. .	10	10	0	„ Balance, being excess of Expenditure over Income .. .. .			11 16 10
„ Prizes .. .. .	5	5	0				
„ Books purchased .. .. .	3	15	7				
„ Depreciation—Furniture 5% per annum .. .. .	1	1	2				
„ Arrears of Subscriptions written off .. .. .	20	19	6				
„ Union of Chartered Accountant Student Societies .. .. .							
—Share of Expenses and Joint Debates .. .. .	13	18	6				
	£226	14	8				£226 14 8

**BALANCE SHEET, 30TH APRIL 1906.**

[illegible]

**F. E. WALKER, Hon. Treasurer.**

We have examined the above Balance Sheet, and the Income and Expenditure Account for the year ended 30th April 1906 with the Books and Vouchers of the Society, and certify the same to be in accordance therewith, and that in our opinion the Balance Sheet correctly sets forth the position of the Society at 30th April 1906.

7th May 1906.

J. EDGAR JORDAN, } *Hon. Auditors.*  
H. BURR-HIGGS. }

## LIBRARIAN'S REPORT.

To the members of the Birmingham Chartered Accountant Students' Society :—

Gentlemen, I have pleasure in presenting herewith my report on the library for the past year.

The number of books issued, as against last year, shows a regrettable decrease of 153, as under :—

	1904-5	1905-6
General Section, Students' Library ..	1,962	1,815
General Section, Birmingham and Mid- land Library .. .. .	67	60
Economic Section, Students' Library ..	10	11
	<u>2,039</u>	<u>1,886</u>

The following books, &c., have been presented during the year, for which we are greatly indebted to the various donors:—

**Rights and Duties of Liquidators, &c. H. Foulks Lynch  
& Co.**

**Executorship and Accounts. H. Foulks Lynch & Co.**

**Cost Records or Factory Accounting.** J. Mann.

**Oncost or Expenses.** J. Mann.

**Notes on Partnership. H. P. C. Kelland.**

**City of Birmingham Blue Book.**

Few books, however, have been purchased, but your Committee have now formulated a scheme by which the library will be made more efficient and up-to-date.

Doubtless the above statistics will receive little or no more attention than do the numerous requests issued by the Librarian and Curator to members retaining overdue books, but I would ask your special consideration of the

### *Alteration of Library Rules*

(particulars of which will be found on the annual meeting notice), and incidentally the general rules, as recommended by your Committee. These new rules, to replace the old, which have been found too stringent and inoperative, have had due and careful consideration from your Committee, and they are put before you in order that the library may be governed in a more efficient and practicable way, so as to ensure each member and student obtaining its fullest advantages and privileges. It is not intended that these new rules, when passed, be merely "paper" ones, but that they be sufficiently enforced, and your careful consideration of them, previous to your attendance at the annual meeting, cannot but induce your hearty support and co-operation.

May I again, as my predecessors have done, call your attention to the "Suggestion Book," which your Committee trust will be used more freely during the current year?

In conclusion, I thank you for the support accorded me during my office, and regret that pressure of time has compelled me to resign from a Committee on which I have been privileged to serve for the past five years.

I am, Gentlemen,

Yours faithfully,

R. GRAHAM SQUIERS.

21 Bennetts Hill, Birmingham.  
1st May 1906.

A hearty vote of thanks was tendered to Mr. Eric M. Carter for having occupied the post of President, and for delivering an address on April 10th, and hearty votes were also tendered to all retiring officers.

The following officers were appointed for the ensuing year:—Mr. Walter Charlton, F.C.A., President; Messrs. J. W. G. Hill, F.C.A., and G. T. W. Coleman, F.C.A., Vice-Presidents; Mr. R. Graham Squiers, Hon. Librarian; Mr. W. E. Rayner, Hon. Treasurer.

Representatives on Joint Committee of Working Union: Mr. Ebenzer Fisher, A.C.A., Mr. P. H. Johnson, A.C.A., and Mr. R. Graham Squiers.

After the meeting a sale was held of the surplus books of the library.

## The Institute of Municipal Treasurers and Accountants (INCORPORATED).

THE annual general meeting of the above Society was held at Carlisle on June 7th and 8th.

The following are the

### REPORT AND ACCOUNTS.

We beg to report that since the last annual general meeting, which was held at Portsmouth, the following meetings of the Council have been held:—

#### Ordinary.

In London, October 13th and 14th, December 15th and 16th, 1905; February 3rd and 4th, May 18th and 19th, 1906. In Edinburgh, March 9th and 10th, 1906.

#### Examination Committee.

In addition to these meetings of the Council, the

Examination Committee, which consists of Messrs. Bailey, Bateson, Carver, and Fairhurst (Examination Secretary), met at Southport, on March 23rd and 24th 1906.

#### Examinations.

Although the Examinations of the Institute for 1905 had been held at the date of the last annual meeting, the examiners had not issued their report, and the results therefore were not known. It was, however, stated that the number of candidates who applied for permission to sit was as follows:—

For the Final .. .. .	40
„ Preliminary .. .. .	56
Total .. .. .	96

The results were as follow:—

The number of candidates who actually sat at the examinations was:—

For the Final .. .. .	38
„ Preliminary .. .. .	50
Total .. .. .	88

The number who satisfied the examiners was as follows:—

For the Final .. .. .	26=68.42%
„ Preliminary .. .. .	38=76%
Total .. .. .	64

Unsuccessful:—

Final .. .. .	12=31.58%
Preliminary .. .. .	12=24%
Total .. .. .	24

In the Final Examination Mr. Arthur Collins, Deputy Borough Treasurer, West Bromwich (formerly with Mr. W. Bateson, Borough Treasurer, Blackpool), obtained the first place and prize of £5 5s. od. The second place and prize of £3 3s. od. was bracketed equal between Mr. J. C. Haworth, of the Borough Treasurer's Office, Blackburn; and Mr. L. C. Nicholson, of the Borough Treasurer's Office, Southampton; the third place and prize of £2 2s. od. going to Mr. W. A. Davies, of the Borough Treasurer's Office, Birkenhead.

The examinations for the present year were held on the 23rd, 24th, and 25th May, at Preston for the Northern Centre, and at Kensington for the London Centre. The

total number of students applying to sit at the examinations was :—

For the Final .. ..	40
„ Preliminary .. ..	68
Total.. ..	108

The examiners are pleased to find that the applications to sit at the examinations again cover a very wide area, no less than forty-five districts being represented, and extending from South Devon, and South and North Wales on the one hand, to Lowestoft and Newcastle on the other.

#### *Financial Circular.*

The Hon. Acting Editor begs to report that inasmuch as the recommendation of the Executive Council raising the subscription from 6s. 6d. to 8s. 6d. per annum was not carried at the annual meeting, and further, that as the finances of the Circular were in an undesirable condition, it became absolutely necessary to economise. This has been done in various directions, resulting in a surplus of £5 15s. 3d., against a deficit in the previous year of £7 13s. 11d.

The subscribers have largely increased during the year, as shown by the following tables :—

Year	Pages including Supplement		Subscribers
1897 ..	128	..	112
1898 ..	132	..	121
1899 ..	156	..	130
1900 ..	184	..	143
1901 ..	201	..	161
1902 ..	264	..	182
1903 ..	312	..	290
1904 ..	316	..	330
1905 ..	285	..	388

The pages as shown above for 1905, number 285, but allowing for smaller and solid type they equal 380 ordinary pages.

The printing of the lectures of the London and Lancashire Students' Societies is costly, and while the present practice is continued it will have a material bearing upon the finances of the Circular.

It was felt that the Students' Society should make a money contribution in respect of the printing of the lectures, and £10 is now paid by the Lancashire Students' Society for 200 special copies of the lecture supplement, and £5 by the London Students' Society for 50 special copies. These sums do not represent the cost of printing, and the deficit is paid out of the general funds of the Circular. For the convenience of students who do not

subscribe to the Circular, the lectures are bound separately ; perhaps this may be an opportune time to state that the measure of financial support given to the Circular by the students can hardly be deemed satisfactory.

The editor desires to sincerely thank all those members who have assisted him by contributions, correspondence, &c., during the year, and although he is very grateful for the support accorded to him, he feels that if the spirit of co-operation is more largely cultivated and members generally regard it a duty to send interesting matter for publication, the usefulness of the Circular will be very much increased.

#### *Accounts of Local Authorities.*

The Joint Select Committee of the House of Lords and the House of Commons on Municipal Trading reported in 1903 upon this question as follows :—

Paragraph 6.—“The first branch of the subject with which the Committee decided to deal was that of Municipal Accounts, with regard both to the form in which they are prepared, the systems under which they are audited, and the right of access to them possessed by the ratepayers. The evidence taken has been mainly directed to these questions.

7.—“Whatever view may be taken of the proper limits, if any, which can be set to municipal trading, it is clearly important that wherever it exists, ratepayers should be not less fully and continuously informed of the success or failure of each undertaking than if they were shareholders in an ordinary trading company.

8.—“In a large number of cases this is undoubtedly done. But there is, in some instances, evidence to a contrary effect, and in view of the ever-increasing number and magnitude of municipal undertakings, it is most desirable that a high and uniform standard of account-keeping should prevail throughout the country.

9.—“The Committee are doubtful whether it would be possible to prescribe a standard form of keeping accounts for all municipal or other local authorities, having regard to the varying conditions existing in different districts. But they recommend that the Local Government Departments should invite the Institute of Chartered Accountants, the Incorporated Society of Accountants and Auditors, and the Institute of Municipal Treasurers and Accountants of England and Wales, and the Society of Accountants in Edinburgh, and the Scottish Institute of Accountants, Glasgow, to confer and report upon the matter.

14.—“All county councils, the London borough councils, and urban district councils are subject to the Local Government Board audit. This audit is carried out by



district auditors, who as a rule are not accountants, and are not, in the opinion of the Committee, properly qualified to discharge the duties which should devolve upon them. By special local Acts the Corporations of Tunbridge Wells, Bournemouth, and Southend-on-Sea must, and the Corporation of Folkestone may, adopt the Local Government Board system of audit. The duties of the auditors seem to be practically confined to certification of figures, and to the noting of illegal items of expenditure.

15.—“To apply this system of audit to municipal corporations would arouse strenuous opposition from them, and the course may be considered impracticable; but in addition to this, the fact that district auditors are not accountants seems to unfit them as a class for the continuous and complicated task of auditing the accounts of what are really great commercial businesses.

16.—“The Committee accordingly recommend that:—

- (a) “The existing systems of audit applicable to corporations, county councils, and urban district councils in England and Wales be abolished.
- (b) “Auditors, being members of the Institute of Chartered Accountants or of the Incorporated Society of Accountants and Auditors, should be appointed by the three classes of local authorities just mentioned.
- (c) “In every case the appointment should be subject to the approval of the Local Government Board, after hearing any objections made by ratepayers, and the auditor, who should hold office for a term not exceeding five years, should be eligible for re-appointment, and should not be dismissed by the local authority without the sanction of the Board.
- (d) “In the event of any disagreement between the local authority and the auditor as to his remuneration, the Local Government Board should have power to determine the matter.
- (e) “The Scots practice of appointing auditors from a distance, in preference to local men, to audit the accounts of small burghs should in similar cases be adopted in England.

17.—“The Committee are of opinion that it should be made clear by statute or regulation that the duties of those entrusted with the audit of local accounts are not confined to mere certification of figures. They therefore further recommend that:—

- (a) “The auditor should have the right of access to all such papers, books, accounts, vouchers,

sanctions for loans, and so forth, as are necessary for his examination and certificate.

- (b) “He should be entitled to require from officers of the authority such information and explanation as may be necessary for the performance of his duties.
- (c) “He should certify:—
  - (i.) “That he has found the accounts in order, or otherwise, as the case may be;
  - (ii.) “That separate accounts of all trading undertakings have been kept, and that every charge which each ought to bear has been duly debited;
  - (iii.) “That in his opinion the accounts issued present a true and correct view of the transactions and results of trading (if any) for the period under investigation;
  - (iv.) “That due provision has been made out of revenue for the repayment of loans, that all items of receipts and expenditure and all known liabilities have been brought into account, and that the value of all assets has in all cases been fairly stated.

18.—“Auditors should be required to express an opinion upon the necessity of reserve funds, of amounts set aside to meet depreciation and obsolescence of plant in addition to the statutory sinking funds, and of the adequacy of such amounts.

19.—“The auditor should also be required to present a report to the local authority. Such report should include observations upon any matters as to which he has not been satisfied, or which in his judgment called for special notice, particularly with regard to the value of any assets taken into account.

20.—“The local authority should forward to the Local Government Board both the detailed accounts and the report of the auditor made upon them. It should be the duty of the auditor to report independently to the Board any case in which an authority declines to carry out any recommendations made by him.

21.—“A printed copy of the accounts, with the certificate and report of the auditor thereon, should be supplied by the local authority to any ratepayer at a reasonable charge.

22.—“After careful consideration the Committee are of opinion that in view of the thoroughness of the proposed audit, powers of surcharge and disallowance could be

altogether dispensed with in the case of the major local authorities.

23.—“Those powers could not, it is believed, be applied to municipal corporations, in view of the strong objection expressed by them; and it is doubted whether their retention in the case of other authorities would compensate for the loss of uniformity which would result.

24.—“The power of disallowance, applying as it does only to illegal expenditure, and not to unwise undertakings and enterprises, does not afford any real safeguard to the ratepayers whose interests are affected.

25.—“With a continuous, vigilant, and thoroughly efficient system of inspection and audit the surest guarantee to the ratepayers against extravagance is to be found in the deterrent effect of public exposure, in addition to the existing legal remedies.

26.—“The dispensing power possessed by the Local Government Board under the Local Authorities (Expenses) Act, 1887, throws on the department an amount of work often out of proportion to the importance of the issue involved.

27.—“The Committee suggest that in view of the large changes recommended by them it might be advisable to create a new body, in the form of a Board of Commissioners of Local Audit, in some respects analogous to the Railway Commission. This body could be entrusted with the powers which the Committee recommend in their report should be vested in the Local Government Board.”

A Departmental Committee to confer and report has at length been appointed, but not in accordance with the suggestion of Paragraph 9 of the foregoing report. For example, the Scottish Institutes have been entirely ignored, and, in fact, only one of the organisations suggested is directly represented on the Committee, which is composed of the following gentlemen:—

Mr. W. Runciman, M.P., Chairman (Parliamentary Secretary of the Local Government Board).

Mr. J. Bromley, Accountant to the Board of Education (late Local Government Board auditor).

Mr. T. Pitts, Assistant Secretary, Local Government Board.

Mr. E. P. Burd, Chief of the Audit Department, Local Government Board.

Mr. F. Merrifield, Clerk to the Sussex County Council (an ex-Local Government Board auditor).

Mr. R. Barrow, F.S.A.A., City Controller and Auditor, Liverpool (Association of Municipal Corporations).

Mr. J. J. Burnley, F.S.A.A., Accountant, Wallasey Urban District Council (Urban District Councils Association).

Mr. J. Gane, President of the Institute of Chartered Accountants, England and Wales.

Towards the *personnel* of the Committee *per se* the Council has nothing but good wishes, but having regard to the scope, breadth, and general character of the work for which the Committee has been constituted, it must be apparent (if the best interests of the community are to be served) that the wider and direct representation which was suggested in Paragraph 9 of the Select Committee's report should have met with a ready response. It should, however, be placed on record that the non-representation of the Institute on the Committee is not to be accounted for on the grounds of passiveness or inertia. The Hon. Secretary has laboured incessantly to secure what the Institute feels, doubtless in common with other bodies, is not a concession or favour, but a sort of birthright. Both in season and out, his zeal and enthusiasm have been unflagging, and the Council hereby places on record its high appreciation of the efforts he has put forth, and not less for the manner in which they have been carried out.

The Council congratulates two of the members of the Institute upon their selection by the Association of Municipal Corporations and the Urban District Councils Association respectively for positions on the Departmental Committee.

“The Committee has been appointed to inquire and report with regard to:—

- (1) “The systems on which the accounts of local authorities in England and Wales are at present kept;
- (2) “Generally as to the system on which the accounts of the various local authorities in England and Wales should be kept, and in particular whether such accounts should be prepared on a system requiring the entries of receipts and payments to be confined as far as possible to actual receipts and payments of money or not; and
- (3) “The regulations which should be made on the subject, regard being had to the necessity for showing accurately the amounts raised by local taxation and the purposes for which they are applied.”

The Council has been invited to submit evidence upon these points, and for that purpose has selected the President and Hon. Secretary to represent the views of the Institute.

The attitude of the Institute with regard to the system upon which the accounts of local authorities should be kept has consistently favoured the system of income and expenditure, as against that of receipts and payments

merely. After it was announced that the Committee was about to be appointed, the Council forthwith made representations to the Local Government Board with the object of obtaining direct representation on the Committee of some member or members of the Institute. A Sub-Committee of the Council was appointed to deal with the matter, and strenuous efforts were made with that object in view.

The Council regrets extremely that its efforts were fruitless.

During the year each member has been supplied with a copy of the correspondence which has taken place on this subject.

The Council has learned with pleasure that other members of the Institute have been invited to give evidence before the Committee on behalf of the County Accountants' Society, viz.:—Mr. W. Clarke, Treasurer West Riding County Council, and Mr. A. W. Fox, Finance Clerk, Warwick County Council.

#### *Income-Tax—Depreciation.*

The Council has considered this question and has obtained returns showing the rates of allowances made in various boroughs for identical undertakings, and has been impressed with the wide variation which obtains. Having regard to the difficulties presented, they have not yet been able to arrive at a decision, and they invite the observations of members of the Institute upon the question, so as to help them to arrive at a decision which will be advantageous to the authorities whom the members represent.

The subject will be introduced to the annual meeting by a member of the Council, with the object of eliciting the views of members.

#### *Grants in aid of Local Taxation.*

During the year the Council approached the Local Government Board in relation to the return of the Local Taxation Account, which is made annually by them to Parliament.

The Council feels strongly the anomalous position which many boroughs now occupy, especially as regards the amount of Imperial aid received by them, based as it is upon the expenditure of the financial year ended 31st March 1888, and it was sought to obtain a return furnishing the details of the amount shown in Column 9 of Part 1 of the above-mentioned return, in order to enable each authority to trace the growth of expenditure under each head, and afterwards classify the result for the purpose of preparing a special report upon the whole subject.

It was pointed out by Mr. Winter, Borough Treasurer, Gateshead, in his paper read at the 1902 annual meeting, that "although it may seem absurd, it is perfectly correct "to state that the larger the number of lunatics, or the

"greater the cost of main roads and police in a district in "1887-8, the greater is the grant for technical education."

The Local Government Board has not acceded to the request of the Council, but it is hoped shortly to obtain a return which will place members in possession of the information. After that has been done, the Council anticipate resuming consideration of the subject.

#### *Standard Form of Accounts for Electricity Undertakings.*

The Sub-Committee which has been appointed to consider and devise a standard form of accounts for electricity undertakings reports that its labours are not sufficiently advanced to enable them to report with advantage to the annual meeting.

#### *Police Pension Funds.*

In the last report the Council stated that during the year they proposed to unite with the Association of Municipal Corporations and the County Councils Association in taking such measures as might be deemed necessary to place this question in a more satisfactory financial position.

It was also stated that the three points to which attention should be directed were (1) Increased Imperial subventions; (2) the retirement of police constables at too early an age; and (3) the constant demand for a greater proportion of police constables to the population in each district.

Representations have been made by the Association of Municipal Corporations to the Chancellor of the Exchequer and the Secretary of State for the Home Department, based upon the figures contained in the paper read by Mr. J. H. Bailey, Borough Treasurer, Blackburn, at the annual meeting of the Institute in 1904 and on the 5th April 1906, Mr. Harwood-Banner, M.P., the Vice-President of that Association, asked the Home Secretary the following question in the House of Commons:—

"Whether he had received a statement prepared by the Association of Municipal Corporations, showing the increased burden thrown upon police authorities outside the metropolis, in consequence of the increase in the number of pensioners chargeable to the pension funds created under the Police Act, 1890; and whether he will take into consideration the desirability of increasing the present annual grant of £150,000 fixed by Parliament in the year 1890, to an amount which will bear the same proportion to the total payments out of the pension funds as the amount granted bore to those payments in the year 1892."

The proportions mentioned in this question are contained in the last report, page 31.

The Home Secretary replied as follows:—

"I have received the statement, and will give it my best consideration; but the question forms part of the far

**Honorary Auditors.**

## Chartered Accountants' Golf Club.

AN Eclectic Medal Competition of 18 holes (under handicap), limited to two rounds, will be held at Sandwich, on Thursday, the 28th June 1906, by kind permission of the Royal St. George's Golf Club. The handicap allowed will be half the competitor's Club handicap. The first prize being kindly presented by T. G. Mellors, Esq., and the second prize by the Club.

A Bogey Competition of 18 holes (under handicap) will be held at Deal, on Friday, the 29th June 1906, by kind permission of the Cinque Ports Golf Club. The first prize being kindly presented by W. Clark Pettigrew, Esq., and the second prize by the Club.

Members are recommended to stay at the South-Eastern Hotel, Deal.

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## Personal.

MESSRS. BAYLEY, WOOD & Co., Chartered Accountants, announce that they have removed to Clarence Buildings, 2 Booth Street, Manchester.

MR. B. H. BROOK ELDRIDGE, Chartered Accountant, has removed to Temple Chambers, 33 Brazenrose Street, Manchester.

MESSRS. SANDS & FLINDERS, Chartered Accountants, announce that they have removed their offices to 12 Victoria Street, Nottingham.

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## Meetings for the ensuing Week.

**Tuesday**—INSTITUTE OF CHARTERED ACCOUNTANTS.—General Purposes Committee, at 3 p.m.; Students Societies' Grants Committee at conclusion of General Purposes Committee.

**Thursday**—CHARTERED ACCOUNTANTS' BENEVOLENT ASSOCIATION.—Executive Committee, at 3.30 p.m.

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## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, June 15th, was 139, viz. :—

New Bankruptcy Proceedings published in the *London Gazette*, 74; Deeds of Arrangement registered, 65. The respective numbers in the corresponding week of last year were: Bankruptcies, 72; Deeds of Arrangement, 76—total, 148; being a decrease of 9. The total number of commercial failures recorded during the 24 weeks of the present year is 3,992; the total number recorded in the corresponding 24 weeks of last year was 4,275, showing a decrease of 283.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, June 15th, was 136. The number in the corresponding week of last year was 121, showing an increase of 15. The total number filed during the 24 weeks of the present year is 3,602; the total number filed in the corresponding 24 weeks of last year was 4,015, showing a decrease of 413.

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## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, June 15th, amounted to £980,472, by way of addition to £1,816,125, previously issued by the same companies. The amount registered in the corresponding week of last year was £1,702,808, showing a decrease of £722,336. The total amount registered during the 24 weeks of the present year was £39,575,689 (in addition to the issues in previous years by the same companies), as compared with £36,129,467 for the corresponding 24 weeks in 1905, showing an increase of £3,446,222.

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## The Profession in Scotland.

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### Personal.

The firm of Alexander & Dixon, accountants and stock-brokers, Library Buildings, Greenock, has been dissolved as at 31st May by mutual consent.

Mr. A. Davidson Smith, C.A., 4A York Place, Edinburgh, has assumed his son, Mr. Charles Maitland Smith, C.A., as a partner. The firm-name is now A. & C. M. Davidson Smith, C.A.

Mr. Charles Hay, C.A., has begun the practice of his profession at 128A George Street, Edinburgh.

**Glasgow Accountants and the Land Values Bill.**

Mr. Alexander Cross, M.P., has presented to the House of Commons a petition by the Institute of Accountants and Actuaries in Glasgow against the Land Values Taxation (Scotland) Bill. The petitioners view with alarm proposals tending not only to increase the burden upon industry, but also to bring about the abandonment of the feuing system, which they consider to have been of inestimable benefit to the commercial communities in Scotland. The petitioners object to the Bill as wrong in principle, inequitable in its provisions, and oppressive to industry.

**Bankruptcy Reform.**

An association has been formed with the title of the East of Scotland Bankruptcy Reform Association, with headquarters in Edinburgh, its objects being sufficiently indicated in the title. It is understood that the movement, which has culminated in the formation of this Association, was initiated by the Guardian Society of Scotland, a trade protection society, which has on more than one occasion memorialised the Secretary of State for Scotland anent bankruptcy reform. That Society has drawn up a list of points which might be considered, and as these are of considerable interest to the profession we give them herewith, along with the suggested programme of the Association, or a committee thereof:—

To inquire into and report:—

1.—On the principal causes of failure of merchants and limited companies, and if any and what measures might be adopted or recommended whereby many of these failures might be prevented, or the number of them reduced.

2.—On the procedure in the winding-up of insolvent estates *outside* the Bankruptcy Courts.

3.—On the procedure in the winding-up of insolvent estates *under* the Bankruptcy Courts.

4.—On the present laws in force relating to the punishment of fraudulent debtors, and if any and what amendment should be made thereon for the protection of creditors.

5.—On the present laws in force relating to the winding-up of limited companies, with special reference to the protection of ordinary trade creditors.

***Estates wound up Outside the Bankruptcy Courts.***

Trust deeds for behoof of creditors.

(a) Should the private law agent of the debtor be trustee on the estate?

(b) Should trust deeds be registered?

(c) Should the majority of creditors bind the minority?

(d) Should the debtor be discharged on payment of a composition?

(e) Should the trustee's accounts be audited, and his commission fixed by a committee of creditors?

(f) Should law agents who hold the bankrupt's books be entitled to claim a preference in respect of their lien over the books?

(g) Should the landlord be entitled to a preferable claim for the full year's rent?

***Estates wound up Under the Bankruptcy Courts.***

1.—Under *cessio bonorum*. Liabilities under £200.

(a) The legal expenses £20 to £30.

(b) Should the legal expenses be reduced?

(c) How should they be taxed?

(d) When the trustee appointed by the sheriff declines to act.

(e) Should the first meeting of creditors be held and the trustee appointed sooner than thirty days of *Gazette* notice?

(f) Where the estate is insufficient to pay a dividend to all the creditors.

(g) Where the debtor has kept no books.

(h) Should he be discharged?

(i) Should the landlord be entitled to a preference for his claim?

Under sequestration. Legal expenses £30 to £50.

1.—The Bankrupt.

(a) How soon should the bankrupt after the petition for sequestration is granted be under the control of the trustee or the Bankruptcy Court?

(b) How soon should he be examined in public after sequestration is granted?

2.—The Bankrupt's Estate.

(a) How soon should the trustee take possession of the estate after sequestration is granted?

(b) Should landlords have a preferable claim over the stock for payment of the rent?

3.—The Creditors.

(a) Should creditors be compelled to swear to their claims before justices of the peace personally?

(b) Should the creditors receive notice of the sequestration officially before the trustee sends out notices?

(c) Should the creditors lodge their affidavits and claims before the date fixed for the election of trustee?

## 4.—The Law Agent.

(a) Should the private law agent of the bankrupt be the law agent in the sequestration?

(b) Should the private law agent of the bankrupt be the trustee in the sequestration?

(c) Should a law agent be entitled to hold the bankrupt's books with a view of getting a preference on the estate for his business account?

(d) Should the law agent in the sequestration be the cautioner for the trustee's intromissions?

(e) How should the law agent's expenses be taxed?

## 5.—The Trustee:

(a) Should the commissioners on the estate fix the trustee's commission?

(b) How should the trustee's commission be fixed; on receipts or payments, or both?

(c) Where the trustee realises heritable property should his commission be paid upon the value of the property realised, or on the reversion after paying the bonds?

(d) Should the trustee's accounts be made up earlier than four months from the date of sequestration?

(e) Should the first dividend be paid earlier than six months from the date of sequestration in the ordinary course?

## 6.—The Commissioners.

(a) Should the number be three or five?

(b) Should they meet together to transact the business of the sequestration?

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**Bank Rate of Discount.**

Sept. 28th 1905 .. .. .	4%
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May 4th „ .. .. .	4%
June 21st „ .. .. .	3½%

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(Page 190)

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**Leading Articles.**

**Municipal Treasurers' Conference.—I.**

THE Twenty-first Annual General Meeting  
of the Institute of Municipal Treasurers  
and Accountants opened at the County Hall,  
Carlisle, on the 7th inst., under the Presidency  
of Mr. G. A. THORPE, of Bradford.

The report of the Council showed that there  
had been 38 candidates for the Final Examination  
of the Institute, of whom 26 satisfied the



examiners, and 50 for the Preliminary Examination, of whom 38 were successful. These figures related to the examinations held in May 1905, the results of which were not published in time to be announced at the last annual conference. At the examinations held in May 1906, 40 candidates were for the Final, and 68 for the Preliminary, thus showing a very satisfactory improvement in the last-named. It was further announced that, as the outcome of a conference held at Edinburgh last March, 20 Scottish officials had been admitted as members of the Institute, and 2 as Associates. These admissions will doubtless be generally regarded as increasing the authority of the Institute to speak upon matters relating to the accounts of local authorities, in that although the law relating to Scottish bodies is in many important respects quite different from that obtaining in this country, local authorities in Scotland have undoubtedly a better name than in England for careful and businesslike management and organisation.

The members having been welcomed by Mr. W. I. R. CROWDER, M.A. (Mayor of Carlisle), Mr. G. A. THORPE, the retiring President, delivered what our contemporary *The Municipal Journal* describes as "a lengthy address." Inasmuch, however, as its report thereon does not exceed four columns, it would seem that our contemporary has very considerably condensed its report of what one would have imagined that it would have regarded as *the* event of the year. We are glad to be able to place before our readers a full and verbatim report of Mr. THORPE'S address, which will be found in another column. The President devoted himself chiefly to three specific matters—the uniform rate, the desirability of increased national aid for the ratepayer,

and the effect of the Sinking Fund in municipal trading.

With regard to the first-named, we agree with the President in regretting that, owing to the attitude adopted by the Local Government Board, clauses providing for one consolidated rate should have been struck out of various private Bills, apparently on no higher ground than that general legislation should provide for it at one stroke. That there are many arguments in favour of the abolition of the present anomalous state of affairs goes, of course, without saying, and in consequence anything that may delay the advent of a very necessary and useful reform is to be deplored. But although, speaking from the local point of view, it is thus an easy matter to criticise the attitude of the Government Department, it must be admitted that this is certainly one of the points upon which uniformity is desirable. At a time, therefore, while a Departmental Committee is considering the whole subject of municipal accounts—which, we presume, includes the subject of the proposed consolidated rate—it must be admitted that there is a good deal to be said in favour of postponing piecemeal legislation, which, unless it has been so well thought out as to be capable of universal adoption, might well delay rather than hasten the advent of a properly matured and equitable general scheme.

While the average ratepayer continues to be constitutionally unable to see anything more than a year in front of his nose, the clamour for increased grants in aid will doubtless continue to be popular; but we must confess that we are a little surprised that anyone occupying a responsible position, and presumably trained in finance, should find much to be said in favour of a policy, the chief practical effect of

which is to conceal responsibility. Unquestionably, if the spending of money is deputed to persons who have been in no way subjected to the odium of having extracted it from the pockets of the community, the direct and inevitable tendency is to encourage extravagance. The only possible justification, therefore, for grants in aid is, it seems to us, with a view to levelling up matters between local authorities, so that the more impecunious may receive assistance at the hands of the most opulent, which will enable them to adequately discharge those services which are not merely to the advantage of their own inhabitants, but also for more general and widespread utility. *Per contra* there can, of course, be little doubt that certain moneys raised locally ought not, in an ideal state, to be available for local expenditure. In particular do we allude to Police Court fines, which have of late amounted to little short of a scandal in certain localities, being admittedly inflicted not for the legitimate purpose of proving a deterrent to past and prospective offenders, but as a means of raising revenue applicable towards the reduction of rates. While we have absolutely no sympathy with law-breakers of any description, we think we may say without fear of contradiction that if fines are to be levied for the purposes of the income that may be derived therefrom, the administration of impartial justice is in very serious danger. The whole subject is, of course, primarily outside the domain of finance, or at least should be; but as it has been referred to by the President of the Institute of Municipal Treasurers and Accountants in the annual address without any mention whatever of the abuse to which we have drawn attention, we feel that it is unnecessary for us to apologise for referring to a matter which, under no con-

ceivable circumstances, ought to be regarded as a question of ways and means.

With regard to the function of the Sinking Fund in the accounts of Trading Departments, we must confess to a feeling of disappointment at the statement of the position that has been put forward. We were, of course, prepared for a point of view which, for want of a better term, can only be described as the point of view of the municipalist—and it is very natural that there should be found a considerable amount of bias in the way in which that point of view was expressed—but we had at least hoped that if the subject was to be referred to at all it would have been mentioned after a sufficient investigation to have enabled Mr. THORPE to come within measurable distance of a comprehension of the real issues involved. It is on account of his failure in this respect that we feel inclined to despair of any improvement in the present essentially unsound financial policy of the majority of local authorities, unless outside expert opinion is called in. As no discussion upon the paper before us was reported in the columns of our contemporary, we can only assume that the views expressed were accepted without discussion, which is certainly unsatisfactory, although not perhaps altogether unexpected.

Mr. THORPE states that the opponents of municipal trading either wilfully or unknowingly withhold one important factor which, in any comparison between municipal and private trading, should be writ large; and that is the annual purchase year by year of the undertaking through the operation of the Sinking Fund, which is a statutory obligation imposed upon municipalities, but which is none the less clear profit, and a feature which must not be lost sight of in any comparison between the

profits of private and municipal trading. This statement, if it means anything at all and is not designed to mislead, must mean that in order to arrive at the true profit earned by a municipal trading undertaking the amount of the statutory Sinking Fund instalment must be added to the credit balance on Revenue Account; or, in the event of the balance on Revenue Account being a debit, that balance must be deducted from the Sinking Fund instalment and the difference treated as the true profit derived from the Trading Department. That is to say, Mr. THORPE, speaking in his capacity as President of the Institute of Municipal Treasurers and Accountants, deliberately wishes it to be understood that, irrespective of charges in respect of Sinking Fund, all necessary charges against Revenue to determine the true net profit of a trading undertaking are habitually and customarily charged. This statement, it will be seen, is entirely at variance with that of those municipalists who contend that the statutory provision for Sinking Fund year by year takes the place of, and is to be regarded as in substitution of, the necessary annual provision for the depreciation of assets. That there is a very serious discrepancy between these two views must, we should imagine, be apparent even to those who have made no special study of accounts; yet, apparently, Mr. THORPE has not thought it necessary even to so much as refer to the widely published view of the situation, which is so essentially antagonistic to his own.

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#### **Amendment of the Deeds of Arrangement Act, 1887.**

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THE further consideration of the provisions contained in the draft Bill appended to the letter from Mr. DAVID P. DAVIES, F.S.A.A., which appeared in our issue of the 16th inst., while in no way detracting from the

interest attaching to this communication, raises a considerable doubt as to the practicability of the suggested reform.

Shortly stated, our correspondent's recommendations appear to be to the effect that upon the appointment of a trustee under a deed of arrangement he shall give security and give notice to all the creditors disclosed by the debtor of the existence of the deed. In the event of a petition in bankruptcy being filed, the trustee shall have power to appear and oppose the petition, and the Court may if it think fit, instead of making a receiving order, confirm the existing trust, either retaining the existing trustee and committee of inspection, or removing any or all and appointing others in their stead. Power is also given to the trustee under the deed to apply to the Court for confirmation thereof even when no petition in bankruptcy has been filed; in which event the Court shall have like powers, save apparently—and, of course, quite reasonably—it has no power to make a receiving order when no petition has been filed. In the event of a deed being confirmed by fraud, misrepresentation, or the concealment of any material fact, power is reserved to set aside the order of confirmation; and there are other minor, but, of course, important provisions of detail as to the keeping of a separate Banking Account for the moneys relating to the estate, and the like.

The weak part about Mr. DAVIES's scheme, it seems to us, is that for all practical purposes it would revive the system of liquidation by arrangement or composition, which obtained under the Bankruptcy Act, 1869, was abolished under the Act of 1883, and is never likely to be restored, in consequence of the enormous abuses that this system gave rise to—abuses on the part of trustees, of the solicitors

employed by them, and of debtors. It was virtually an arrangement under which a majority of creditors could bind a minority to take what they could get, which frequently amounted to nothing at all, and deprived them of all effective rights of inquiry into the conduct of the debtor or the subsequent administration of his estate. Of course, the amended plan put forward by our correspondent does provide certain safeguards, but it does not provide any inquiry into the conduct of the debtor, nor apparently does it provide any effective means of checking the expenditure incurred by the trustee under the deed. There can be little doubt that if such a Bill were passed bankruptcy proceedings would become practically obsolete in all cases where there were any assets to be dealt with, but no very efficient safeguards would be provided to ensure that creditors derived any benefit from the altered procedure. Moreover, if we wish to be practical, it is important to bear in mind that there is no chance of any bankruptcy legislation which does not receive the support of the Board of Trade; and a system which would have the effect of taking away from the Official Receiver's Department all the little business that it now transacts and that is worth having, would, in the nature of things, be likely to be unpopular enough both at Carey Street and at Whitehall.

For our own part, we would approach the subject from an entirely different point of view, aiming not at offering express facilities for insolvent debtors to make arrangements with their creditors outside bankruptcy, which would be certain to be opposed officially, but rather at correcting admitted abuses in the procedure of the Deeds of Arrangement Act itself; to some extent remedying those abuses by introducing

a modified system of official control in connection with deeds of arrangement, and then leaving the two systems to stand side by side—to stand or fall upon their intrinsic merits.

In the first place, we would provide that no deed of arrangement should be effective until it had been lodged for registration, accompanied by a declaration in the prescribed form signed by the trustee, intimating his willingness to act, and a cover note for an amount equal to the estimated value of the assets as jointly declared by himself and the debtor had been lodged with the Registrar. Power should be reserved to the Board of Trade to remove a trustee so appointed at any time upon good cause, and thereupon the Official Receiver for the district should become trustee until such time as the creditors could be called together and by resolution appoint another in his place if they thought fit. The Board of Trade should deal with such appointments in exactly the same way as trusteeships in bankruptcy are at present dealt with, but under this system the trustee nominated would act at once, and continue to act until such time as he might be removed by the Board of Trade or by vote of the creditors. We regard it as most important that the trustee should in some formal way intimate his willingness to act, so that he may become responsible for what subsequently transpires, and so that the abuse of a non-existent person being appointed trustee may be overcome.

As soon as practicable after his appointment it should be the duty of the trustee to call a meeting of creditors, notice of which should be advertised; and at such meeting if the creditors by a majority of (say) three-fourths in value and a clear majority in number resolve in favour of the estate being administered under the deed,

such resolution should be binding on all creditors present at that meeting, save those who have actually voted against the resolution. It should be the duty of the trustee to report to the local Bankruptcy Court as to the result of the creditors' meeting, and the Court—after hearing all interested parties—should confirm the deed or forthwith make a receiving order against the debtor as it thinks just, its decisions in this respect being, of course, subject to the usual right of appeal. The effect of an order of Court confirming the deed should be to estop anyone from presenting a petition in bankruptcy against the debtor in respect of liabilities incurred prior to the date of the deed; and, in the event of a receiving order being made, the trustee under the deed should be required to account to the Official Receiver with the same strictness as a special manager in bankruptcy is now required to account. At the conclusion of the realisation, and once at least in every six months during the continuance thereof, the trustee should be required to call a meeting of creditors, and to submit to them a general statement and an account of his receipts and payments. Such account should have been previously audited by two creditors nominated at the first meeting of creditors, and upon being approved at the half-yearly meeting should be filed with the Board of Trade and there be open to the inspection of all interested parties. Any creditor dissatisfied with the conduct of the trustee, or with the conduct of affairs generally, should have the same right of application to the Court that he enjoys in bankruptcy; and, similarly, the trustee should have the same right of application to the Court for directions. If at any time during the continuance of the trust the trustee is of opinion that it would be for the benefit of the estate that the machinery of bankruptcy should be invoked, he should have the right of petitioning for a receiving order against the debtor, notwith-

standing the fact that the deed has been already confirmed by the Court; and upon the hearing of such petition the Court should act in such manner as it thinks desirable in the interests of the estate. In the event of a trustee declining to file a petition against the debtor, under such circumstances any creditor whose claim has been admitted should have the right to appeal to the Court against the trustee's refusal, whereupon the Court should make such order as it thinks just. The trustee under the deed should in these cases be continued as the trustee in the bankruptcy.

Minor but important provisions would be for the lodgment of all moneys belonging to the estate, and an account should be opened in the name of the estate at a bank, being one of a list of banks approved by the Board of Trade; and at the closing of an estate the trustee should be required to pay all unclaimed dividends into a special account at the Bank of England, to be dealt with like unclaimed dividends in bankruptcy. On the completion of a realisation and the payment of a final dividend, a final meeting of creditors should be convened, and at such meeting a resolution should be passed approving the final accounts of the trustee and conditionally releasing him from the trust. Upon the lodgment of the final audited and approved accounts with the Board of Trade, together with a certified copy of the resolution, such release should become absolute, subject to the right of any creditor to apply to the Bankruptcy Court for such release to be revoked on the ground of fraud, whereupon the liabilities of the trustee should revive. Another important but generally neglected provision would be that the execution by a debtor of a deed of arrangement should, if confirmed, be a release to the debtor against the claims of all creditors scheduled by him, but not against any other claims unless the Court so orders; but that in cases where

the exact amount due to certain creditors was *bonâ fide* in doubt the debtor might make provision in general terms for unascertained liabilities not exceeding a certain sum, and such reserve should be regarded as a disclosure of those claims of creditors which are first established and which were not included in detail in the debtor's schedule of liabilities. The possibility of fraud arising from a deed of assignment not relating to the whole of a debtor's estate would, it is thought, be sufficiently covered by rendering the debtor liable to an adjudication in bankruptcy at any time on the petition of the trustee under the deed. It might, however, be desirable to add a further clause that, in the event of the realisation under the deed being completed and the estate closed before the concealment of assets came to the knowledge of any creditor under that deed, his right to petition in bankruptcy should be revived.

It will be seen that the points which we regard as being the more material in any amendment of the existing law with regard to private arrangements are (1) that proper steps should be taken to secure the appointment of only responsible persons as trustees, and to provide for their reasonable supervision and control; (2) that proper steps should be taken to provide that a debtor shall only be able to escape bankruptcy as a condition of completely disclosing his affairs, and reasonably assisting in their realisation in every possible way; (3) that no isolated creditor, out of mere vindictiveness or other improper motive, shall have the right of throwing the estate into bankruptcy to the detriment of the interests of creditors generally; (4) that in the event of bankruptcy following after administration under a deed, all *bonâ fide* transactions entered into shall be duly protected.

We shall be glad to hear the views of other of our readers upon this interesting problem.

## Weekly Notes.

### Limited Companies and Annual Accounts.

In the House of Commons last week Sir Williams Evans Gordon asked the President of the Board of Trade whether his attention had been called to the growing practice among certain classes of limited liability companies of ignoring the Companies Act by omitting to call annual meetings and omitting to present annual reports and accounts as required by the Act and their articles of association; and whether, in the interests of investors and the commercial credit of this country, he proposed to take any steps, either by Board of Trade enquiry or otherwise, to enforce the law. Mr. Lloyd George, replying to the question, is reported to have stated that his attention had been called to the practice, and he proposed to consider what amendments of the company law generally were desirable when he received the report of the Committee now sitting. He stated that he expected the report of the Committee almost immediately.

### Income Tax and Casual Traders.

It is reported that the attention of Sir Charles Dilke, M.P., Chairman of the Income Tax Committee, has been called to the fact that many traders at the Earl's Court Exhibition, dealing in fancy goods, &c., have no permanent premises in this country, and subsequently may escape the payment of income-tax. A contemporary says that the question raised is one of interest to taxpayers, especially in the West end, where interesting foreigners open shops for the season, and when that is over quietly steal away. Such methods of trade, it is said, must be profitable, otherwise we should not have them repeated annually on so extensive a scale, and a plea is made that the net of the income-tax officials should be cast in their direction.

### Railway Accounts.

It is reported that the Board of Trade has appointed a Committee to consider and report what changes, if any, are desirable in the form and scope of the accounts and statistical returns (capital, traffic, receipts, and expenditure) rendered by railway companies under the Railway Regulation Acts. The Chairman of the Committee is Mr. A. C. Cole, a director of the Bank of England. Three railway companies are represented by Mr. W. Bailey, Sir Charles J. Owens, and Mr. G. J. Whitelaw; Mr. G. Stapylton Barnes and Mr. A. Wilson Fox, C.B., attend on behalf of the Board of Trade; while shareholders and other critics may be said to be represented

by Mr. W. N. Acworth, Mr. George Paish, and the Hon. George Peel. The names of Mr. W. N. Acworth and the Hon. George Peel will doubtless be well known to all who take an interest in British railway affairs, and it may be said that Mr. George Paish of the *Statist* has done some excellent work with regard to the reform of statistics. Without seeking in any way to anticipate the labours or conclusions of the Committee, we think that the need for reform is certainly very strong, both as regards accounts and statistics. The accounts themselves might be made to show much more detail, or, at any rate, the channels of intake and outflow might certainly be given in greater detail. A reclassification generally, especially as regards the Revenue Account, might also be valuable. As to statistics, the question of ton mileage and passenger mileage still remains to be fought out, and it will be interesting to see not only what evidence the Committee is able to attract in support of either side, but also to what conclusions it arrives. Complaint has been made in the columns of the financial press that no independent professional accountant has been included on the investigating body. We think it is a pity that the complaint should be justified, but doubtless the Committee will give those members of the profession best qualified to speak an opportunity of presenting their views.

**A Novel Waiver Clause.** A financial contemporary calls attention to the fact that the articles of association of a certain tea company, on pension lines, provide that "no customers shall have any right of action against the company or any of its directors for any withdrawal of benefits, and all customers of the company shall be deemed to have had notice of and shall not be allowed to plead that they have not had notice of this clause." Our contemporary very properly adds that it would be interesting to know whether the directors of this company intend to take adequate measures for the purpose of bringing this clause under the notice of their customers, or whether they will regard its appearance in the articles of association as a sufficient warning. It would also be interesting, we think, to know whether such a clause is strictly legal.

**Bond Investment Companies.** The Bill introduced in the House of Commons by Mr. Kearley, on behalf of the Board of Trade, to provide for the better regulation of bond investment companies contains some interesting clauses. To begin with, the expression "bond investment companies" is defined as meaning "any person or persons, corporate or unincorporate, not being a society registered by the Registrar of Friendly Societies, and not being a life assurance company, who carry on the business of issuing bonds by which

"the company, in return for periodical subscriptions or any other payment, contracts to pay to the bondholder a sum at a future date." It is proposed that before a bond investment company is established or commences business there shall be deposited with the Court the sum of £10,000, to be returned when the funds set apart and secured for the bondholders amount to £20,000. The certificate of the Registrar of Joint Stock Companies shall not be issued until such deposit has been made. Another clause provides that at the close of each financial year a statement of revenue and a Balance Sheet shall be prepared, with an actuarial investigation and report, once at least in every five years. The measure also provides for the winding-up of a company on the petition of a bondholder, and enacts that no advantage dependent upon lot or chance shall be given to bondholders. There is the usual provision for the registration of documents with the Board of Trade, where they will be open for inspection, and the penalties are sufficiently heavy to be effective. There seems little doubt that the Bill will become law, and it should exercise a very beneficial effect.

#### **The Law's Delays.**

Unsatisfactory as was the state of business in the King's Bench Division at the opening of the present term, matters appear to be going from bad to worse, no fewer than four Judges having for one reason or another been absent from the Courts. Mr. Justice Bucknill continues to sit in the Probate, Divorce, and Admiralty Division, Mr. Justice Channell is unfortunately still absent through illness, and Mr. Justice Grantham and Mr. Justice Walton have been engaged on election petitions. Some slight relief has been afforded by the appointment of Mr. William Pickford, K.C., as a Commissioner of Assize, but until it becomes the rule to appoint Commissioners to fill all casual vacancies in the King's Bench owing to illness or other causes, there seems to be little prospect of keeping down the ever-growing list of arrears.

#### **Solicitors and Non-Legal Business.**

The circular recently issued by the Incorporated Law Society of Liverpool, to which we drew attention in our last issue, has also been commented upon by the *Law Journal*. Our contemporary points out that in 1887 the Council of the Law Society expressed the opinion that there was no objection to a solicitor acting as an auctioneer, but that it would be necessary for him to take out an auctioneer's licence, and his charges would be regulated according to the general order under the Solicitors' Remuneration Act, and not according to the auctioneers' scale. In 1893 a further

pronouncement was made, to the effect that the Council was not aware of any reason which made it illegal for a solicitor to act as stockbroker or land agent. These pronouncements may in all probability be taken as disposing of our inquiry as to whether the Council at head-quarters would adopt quite so broad a view of the scope permitted to practising solicitors as the Liverpool Society, but in no other way affects our argument as to the undesirability of solicitors undertaking work for which they are not fitted either by training or experience. Our contemporary, however, gives an additional reason why it would be sorry if any large number of solicitors made it a practice to undertake the duties of other callings. Their dual capacity, it states, might sometimes result in difficulties, and there cannot be the least doubt that the risks coming under this heading might easily assume serious proportions. For instance, if a man employs his solicitor as accountant, auctioneer, stockbroker, or banker, who has he to turn to for advice in the event of his being dissatisfied with the manner in which these duties have been performed, and desiring to consider the chances of success that would attend an action for negligence?

**The Ocean Accident and Guarantee Corporation, Lim.** The Ocean Accident and Guarantee Corporation, Lim., having obtained the necessary powers, has now established a Fire Insurance Department, which, so far as we can gather, is to be characterised by an entire freedom from all undesirable traditions and several novel and valuable features. So many fire insurance companies have encroached upon the field previously occupied by accident and guarantee companies, that no surprise can be reasonably felt at a policy of retaliation. How it will work out in practice will no doubt be followed with considerable interest. At present we gather that the Ocean occupies the position of a non-tariff office, and it will be of considerable interest to see whether it maintains that position or follows in the footsteps of the majority of non-tariff companies by eventually joining the Fire Committee, as being practically the only means of securing re-insurances in sufficient quantities to enable a large business to be transacted upon safe lines.

**Municipal Reserve Funds.** In its issue of the 22nd inst. *The Municipal Journal* asserted that the object of the Reserve Fund as applied to the electricity department of a municipal corporation is to meet any deficiency in any particular year or any extraordinary

expenditure, and was not intended as a Depreciation Fund, which, it has been held, is not necessary if the undertakings are maintained in good condition. It would, we feel sure, be of general interest to our readers if our contemporary would state *who* has held that a Depreciation Fund is not necessary if electricity undertakings are maintained in good condition, and what sort of extraordinary expenditure it anticipates necessitating the creation of a large Reserve Fund other than abnormal expenditure upon renewals. When commenting upon the fact that it is the custom of Glasgow not to relieve rates out of municipal profits, but to reduce charges and build up Reserve Funds for future contingencies, it is only fair to mention that at Glasgow the rates are not mortgaged as security for the loans for trading purposes, and that, therefore, there is no more reason why they should expect to participate in the profits than in the profits of any public undertaking managed by (say) a dock or harbour trust.

**The Chancellor  
on Bank  
Reserves.**

At the dinner given on the 20th inst. at the Mansion House, by the Lord Mayor and Lady Mayoress to the bankers and merchants of the City of London, Mr. Asquith let fall some interesting observations upon the subject of bank reserves, which, he stated, was one that required most careful and thorough consideration. Without going so far as to commit himself to any definite plan, the Chancellor of the Exchequer stated that the monthly returns now published by the banks were inadequate owing to "window dressing," and that he thought that the issue of weekly returns, such as those at present issued by the Bank of England, would be an excellent step in the right direction. Our contemporary *The Statist* is sceptical as to the possibility of window-dressing upon any extensive scale at the present time. It may be pointed out, however, that while no doubt with monthly returns it would of necessity have to be kept within somewhat narrow limits, the banking figures during the first few days of every month are invariably higher than the average daily figures, and that the more frequent returns would doubtless prove more valuable. Whether, however, a return always made up to the same day of the week would prove any very material improvement is, we think, a very open question. We would suggest rather that the returns should be made up to specified dates in each month, no matter upon what day of the week those dates fall, save that, of course, Saturday's or Monday's figures would have to be given where the



prescribed day fell upon a Sunday, and a similar adjustment would be necessary for bank and public holidays.

#### Secret Reserves.

Mr. Justice Buckley had before him a point of the greatest possible interest to accountants last week in the case of *Newton v. The Birmingham Small Arms Company, Lim.*, which raised a question as to whether the resolutions recently passed by the defendant company purporting to alter its articles of association so as to entitle it to form a Secret Reserve were or were not *ultra vires*. We commented upon the matter shortly in our issue of the 24th February last, but as his Lordship's decision in the case just referred to has been deferred, our further comment must, of course, be postponed until after judgment has been delivered. At the moment we will merely say that the pros and cons were very fully argued, and that certain aspects of the matter were raised which go considerably beyond any previous discussion that we remember to have observed. In the course of the hearing his Lordship referred to the Secret Reserve as a Secret Service Fund, and it seemed clear that, upon the wording of the articles that have been challenged, power was reserved for the directors to deal with moneys so set aside out of profits either by investment or otherwise.

#### Partial Audits.

With respect to our comments on the case of *Smith v. Sheard*, which appeared in a leading article in our issue of the 26th ult., we are very glad to hear that Mr. Whitaker entirely agrees with our view that there is a very material difference between a complete audit and a partial audit. Mr. Whitaker, however, appears to think that he has been somewhat badly treated at our hands, for he reminds us that he never asserted that no such difference existed, his evidence being to the effect that there was no difference between an audit and a complete audit. We should be sorry if we have (albeit quite unintentionally) done Mr. Whitaker or anyone else an injustice, but it occurred to us, on reading the report of the *Liverpool Courier*, that Mr. Whitaker had been put into the box to prove that the arrangement which the defendant claimed to have made—to perform a partial audit only—had no practical effect as limiting either his duties or his responsibilities. We must confess that it did not occur to us that the plaintiff's legal advisers would think it necessary to call expert evidence to prove so obvious a truism as that there is no difference between an audit and a complete audit.

## Current Law.

### ACCOUNTANCY AND AUDITING.

*Newton v. Birmingham Small Arms Co., Lim.*

Held, that articles of association purporting to preclude the auditors of a company from availing themselves of their statutory right to report to the shareholders as to the whole state of the company's affairs are *ultra vires*.—(*Times*, June 28.)

### BANKRUPTCIES AND INSOLVENCIES.

*In re Klein; ex parte Goodwin.*

Bigham, J.

Held, that the claim of a commercial traveller employed by the bankrupt, and paid £2 per week and a commission of 3½ per cent. on all business done by him for the bankrupt, who had been drawing out £2 10s. per week, generally on account, is entitled to rank as a preferential creditor for the full amount of the balance due to him.—(*Times*, June 26.)

## Correspondence and Enquiries.

All communications to the Editor should be by letter only.

### Interest in Lieu of Notice.

[REPLY TO "F. JNO. H."—The payment by the trustee is *prima facie* a breach of trust, and he would be liable personally, with, however, a right of indemnity against the tenant-for-life or remainderman if he acted at the instigation of one or other of them, and possibly against both if at their joint request. Should he, however, be able to establish that what he did was *bona fide* done for the benefit of all parties concerned, then I think that the interest might well be charged against capital.—OUR LEGAL CONTRIBUTOR.]

(To the Editor of *The Accountant*.)

SIR,—May I suggest that a relative proportion of the interest might be equitably chargeable between the tenant-for-life and the remainderman? (But there may be a legal definition for this!)

Yours faithfully,

DECIMAL.

### Graduated Income Tax (German).

(To the Editor of *The Accountant*.)

SIR,—The contribution by Mr. Eric Heathcote will be, no doubt, very acceptable to your readers at this time.

Would he supplement it by an indication of two or three items which are accepted *contra*, or may there be

a recognised proportion, say, for rent and other taxes? This possibility seems to be suggested by paragraph 1.

Yours faithfully,

FRACTION.

### **Re Income Tax.**

(To the Editor of *The Accountant*.)

SIR,—(1) Two people enter into partnership and purchase an existing business. The law costs *re* partnership deed, conveyance, and mortgages (including stamp fees) are treated by the new firm as an expense to be borne by the partners in the proportion in which they share profits. Are any or all of these allowed as a deduction before assessment under Schedule D?

(2) A country brewer owns certain freehold public-houses which he lets on quarterly tenancy, the trade not being tied, and it being the custom in that part of the country for the goodwill to vest in the tenant. The brewer does all repairs. When making his return for assessment under Schedule D, may he bring in the total of his rent received and charge against it the gross amount of Schedule A assessment—*i.e.*, the full amount before the statutory deduction for repairs has been made?

Yours faithfully,

EMOCNIXAL.

### **Wall Street's Methods of Attracting Business.**

(To the Editor of *The Accountant*.)

SIR,—I have read the article under this heading in a previous issue, and, whilst agreeing with you upon the facts, I do not at all agree with your summing up "that this is one of the things they do better in New York."

When I was in New York last autumn I "walked into" the offices of a firm of brokers. The board and the tickers were there, and in front of the board were two or three rows of comfortable arm-chairs (each with a spittoon at the side, of course). These arm-chairs were well filled every time I went. Apparently there are a very large number of men in New York who have no business whatsoever, but are mere gamblers. They go to their brokers' offices first thing every morning and stay there the whole day, just buying and selling any stock that takes their fancy. I consider that this is encouraging gambling in its worst form, and accounts for the enormous turnover of the Stock Exchange, New York, as against the Stock Exchange, London.

This is only one of the many business methods which I saw in New York of which I did not at all approve. I came home with the feeling that, although

in some ways we may be old-fashioned in this country, I would far rather do business in this country than in the States, and that their boasted superiority to us in everything is a boast, and nothing more.

I should like to hear what Mr. G. Nicholson has to say as to the American system of bookkeeping, as suggested also in a previous issue, and possibly he might give us the benefit of his views on American methods of business as well.

Yours truly,

June 21st 1906.

A CONSTANT READER.

### **Solicitors and Non-Legal Business.**

(To the Editor of *The Accountant*.)

SIR,—With reference to your leading article under the above heading appearing in *The Accountant* of 23rd June.

I should like your opinion, and the opinion of your readers, upon the following:—

A company was formed in the early fifties, and scrip issued in due course.

These shares are, of course, being continually transferred, and in some cases fresh certificates issued. Recently the holder of some shares—who, by the way, held the original certificates, and also a single certificate for the same shares (all the documents being under the seal of the company)—sold a portion of his holding, and the whole batch of certificates, old and new, were deposited with the transfer, with the usual request for new certificates. A new certificate was issued for the shares transferred, but the whole of the old certificates, and the old single certificate each for the full number of shares, were returned to the original holder.

The position is thus: one person holds double certificates for his shares, and two persons hold certificates, signed by directors and sealed with the company's seal, for the same shares. If the person not the true owner of the shares were to re-sell the shares which do not belong to him, but for which he has certificates, and then flit to other more comfortable lodgings, what would be the position of the company, the directors, and secretary, and, more important, against whom would the defrauded transferee have a right of action?

Needless to say, Mr. Editor, the secretary to this flourishing company is not a Chartered Accountant, but a member of the exclusive legal profession.

I hope that I have stated the facts clearly enough to enable you to give an opinion, and, if not, will gladly answer any queries thereon.

Yours truly,

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**Mortgages and Loan Capital.***(To the Editor of The Accountant.)*

SIR,—A limited company desires to include, along with its loan capital, a mortgage on its buildings in its Balance Sheet without mentioning the existence of the mortgage. Are mortgages not obliged to be shown separately, or would it be sufficient if a mortgage was mentioned in the auditor's report to the shareholders?

Yours faithfully,

June 25th 1906.

SUBSCRIBER.

**Bankruptcy Committee and Deeds of Arrangement.***(To the Editor of The Accountant.)*

SIR,—Will you kindly allow me a few observations which, through consideration for your space, I held over.

In my draft I have provided for application for confirmation by the trustee only, but I should extend the power to apply also to the debtor, and it might be extended to any creditor. It is easy to conceive a case where the trustee, being secure against bankruptcy, will not make application for confirmation where it only concerns the debtor, and is himself quite indifferent as to the non-assenting minority.

There should be a rule that where an additional or substituted trustee is appointed he shall not be personally liable by reason of any act done prior to his appointment by his co-trustee or predecessor.

It is unnecessary to give rights of disclaimer as in bankruptcy.

It is necessary to maintain the distinction between bankruptcy and deed proceedings.

It frequently happens that a deed is taken to keep out an execution, and it is not intended to be registered. This is a very useful proceeding, and nothing in my draft will interfere with it, since the draft only applies to deeds registered or to be registered, and the trustee will know before the fifth day from its execution whether or not the deed will be registered.

It is no uncommon thing to meet with large estates being forced into bankruptcy, because experience has taught the accountant that it is almost impossible to carry the arrangement out under a deed; and this happens generally because some creditor large enough for bankruptcy waits for better terms.

Objection may be taken to the further introduction of the official element into deeds. But we are bound to have it in some form, and it is for us to suggest the form it shall take. The bankruptcy staff of the Board of Trade is a very expensive one, which does not give

value for its cost. Elaborate machinery exists throughout the country which can be utilised, and between most accountants and Official Receivers there is a friendly feeling, and the closer the relations the more official respect there will be for the profession of accountancy. The trustees, whether official or otherwise, will be bound by the terms of the deed, and there will be a cleaner administration of the Act. It is quite time an end was put to the many bogus so-called Trade Protection Societies run by low-class accountants and low-class solicitors solely for the purpose of obtaining trusteeships, and I think my suggestions will tend to their extinction, and consequently to the improvement of the status of legitimate accountants.

I have introduced the official element only for cases of an additional trustee being appointed, and in giving an Official Receiver the right of audience on hearing a petition where a deed has been registered. But the Court will have regard to the wishes of a majority of the creditors, and it is quite clear that it would not interfere in the administration of an estate by a respectable accountant, properly authorised and acting legitimately. Its interference would be reserved for cases where the deed was improperly procured, generally by irresponsible persons calling themselves accountants, but who are free from the control of Disciplinary Committees.

The amendment of the Act of 1887 is primarily a question for accountants. They know best the advantages and disadvantages arising to themselves as trustees, and to the commercial community as creditors. They are in close touch with every aspect of the question and with every class concerned, and now that an opportunity is given by the Government, accountants should not neglect it. It seems to me that it can be best secured through the Councils, or Parliamentary Committees, of the Institute and Society meeting, drawing up a draft Act, and presenting it to the Committee as a practical contribution to a solution of the difficulties. Each accountant, doubtless, has suggestions for improvement, but the two Councils contain experts such as can hardly be found elsewhere. And no petty jealousy or rivalry, or contemptuous phrases hurled about indiscriminately by persons, whether responsible or irresponsible, should be permitted to prevent a useful work from being done.

The two Councils have sufficient influence with very many members of Parliament to compel attention to their views, and we have the undoubted advantage that for the first time for many years we have at the

head of the Board of Trade an experienced man whose practice as a solicitor has given him a close insight into the shortcomings of the Act. It is to be hoped that the opportunity will not be neglected, and I feel sure that joint action on the part of the two Councils will command the attention and respect of the Board of Trade and Parliament, and go a long way towards settling the question.

Yours obediently,

25th June 1906.

DAVID P. DAVIES.

## Review.

### Urban District Councils' Accounts.

By FRED S. ECKERSLEY.

(THE "ACCOUNTANTS' LIBRARY," Vol. XLV.)

London, 1906: Gee & Co., 34 Moorgate Street, E.C.

Price 5s. net.

At a time like the present, when an increasing interest is being taken in the accounts of local authorities, and when a Parliamentary Committee is sitting to deal with the subject, the issue of such a book as that by Mr. Eckersley (the Accountant of the Urban District Council of St. Anne's-on-Sea) is particularly well timed. The writer is fully alive to the importance of a more efficient system of accounting than that which is very frequently employed, and there can be little doubt as to the practical value of such a system as that which he describes, which, while by no means unduly complicated, certainly has the appearance of complete efficiency. It is just possible that, from the point of view of imparting instruction to the average employee of a local authority, too much knowledge of a general nature has been assumed; but if that be so, it can only be because the officers in question are not properly qualified to satisfactorily discharge their duties. The explanations are sufficiently full, and more than sufficiently clear, to be entirely comprehensible to all qualified persons. Throughout, the work is copiously illustrated with *pro forma* examples, and there is an interesting appendix giving the forms of the more important accounts in full. The alternative methods of preparing the Balance Sheet, which are shown on pages 127-8, are worthy of careful study, as also are the eminently sound views expressed in Chapter VIII. on the subject of Reserve Funds and Depreciation.

## The Leicester Chartered Accountants Students' Society.

THE fifth annual general meeting of the Society was held at Winchester House, Welford Road, Leicester, on Friday, the 8th day of June 1906.

There was a fair attendance, Mr. Carryer, A.C.A., being in the chair.

The minutes of the preceding meeting were read and confirmed.

The following are the

### REPORT AND ACCOUNTS.

1.—Your Committee have pleasure in presenting their annual report and statement of accounts for the year ending 30th April 1906.

2.—The aggregate membership is 48, comprising 24 honorary and 24 ordinary members, as against 42 at the date of the last report, being an increase of 6.

This is shown as follows:—

	Honorary Ordinary.	
Members on April 30th 1905 ..	21	21
Admissions during the year ..	4	6
	25	27
Less: Resignations (two Members leaving the Town) ..		3
Deceased .. .. .	1	—
Membership on April 30th 1906 ..	24	24

3.—Ten ordinary meetings have been held during the year, the average attendance of members, both honorary and ordinary, being 15. The debate with the London Chartered Accountants Students' Society, at London, arranged by the Union of Chartered Accountants Students' Societies was attended by seven members. The Nottingham Society visited Leicester for a debate on the same subject.

4.—The meetings held have been as follows:—

1905.

Oct. 11.—Lecture: "How to criticise Accounts." Mr. W. R. Hamilton, F.C.A., Nottingham.

Nov. 8.—Lecture: "Some Notes on Investigations." Mr. M. Webster Jenkinson, A.C.A., Sheffield.

„ 15.—Joint Debate with the Nottingham Chartered Accountants Students' Society. Subject: "A Mock Shareholders' Meeting."

Dec. 13.—Lecture: "Executors." Mr. H. P. C. Kelland, London.

„ 14.—Joint Debate with the London Chartered Accountants Students' Society (at London). Subject: "A Mock Shareholders' Meeting."

1906.

Jan. 24.—Lecture: "Brewery Accounts and Audits." Mr. Herbert Lanham, A.C.A., London.

Feb. 14.—Lecture: "An Income Tax Assessment." Mr. F. W. Preston, A.C.A., Leicester.

Mar. 7.—Lecture: "Colliery Accounts." Mr. E. E. Price, F.C.A., London.

„ 26.—Lecture: "Sureties." Mr. Tinsley Lindley, LL.D., Nottingham.

Apr. 11.—Lecture: "Principal and Agent." Mr. Beaumont Morice, Esq., LL.B., London.

„ 25.—Lecture: "The Sale of Goods." Mr. E. Huntsman, Solicitor, Nottingham.

5.—Your Committee take this opportunity of expressing their indebtedness to those gentlemen who have read papers or who have represented this Society. The lectures, other than those delivered from notes, will appear in the "Joint Transactions."

6.—Classes in Law and Accountancy have been held during the year, the Law being taken by Dr. Tinsley Lindley, and the Accountancy by Mr. S. R. Wilby, A.C.A. The attendance has been very satisfactory.

7.—Your Committee desire to place on record their great satisfaction with the increase in the number of books borrowed from the Library.

8.—The following members were successful at the Institute Examinations:—

June 1905 (Intermediate).—R. H. Hardy, E. Lewis, A. D. Wykes.

Final.—H. Gimson (13th in order of merit).

December 1905 (Intermediate).—S. Allen, S. J. Skillington.

9.—In accordance with the rules, the Officers, Committee, and Auditors retire.

Your Committee take this opportunity of expressing their appreciation of the services rendered to the Society by the President, Mr. A. P. Carryer, A.C.A., who has shown a practical interest in the welfare of the Society, and the Vice-Presidents, Messrs. G. S. Bankart, A.C.A., and J. H. Baker, A.C.A., during the past year, and tender them their best thanks.

The Hon. Secretary and the Hon. Treasurer do not desire to offer themselves for re-election. During the year Mr. H. Gimson, the Hon. Treasurer, resigned, owing to his leaving the town, and your Committee appointed Mr. J. R. Watson to that office.

All the Committee are eligible for re-election.

The accounts, duly audited, are annexed.

On behalf of the Committee,

G. A. COOKE, *Chairman*,

F. S. HEATH, *Hon. Secretary*.

May 18th 1906.

#### SUMMARY OF RECEIPTS AND PAYMENTS for the Year ending April 30th 1906.

		<i>Receipts.</i>			
		£	s	d	£ s d
1905.	To Balance—Cash in hand .. ..	£	0	5	9
April 30.	" at Bank .. ..	2	13	8	
1906.					2 19 5
April 30.	To Subscriptions—				
	Honorary Members .. ..	13	13	0	
	Ordinary Members .. ..	12	6	9	
					25 19 9
	" Grant from Leicester Society of Chartered Accountants .. ..				10 0 0
	" Subscriptions to <i>Accountants' Journal</i> (contra) ..	3	18	0	
					£42 17 2

		<i>Payments.</i>			
		£	s	d	£ s d
1906.	By Hire of Room for Meetings .. ..	2	12	6	
April 30.	" Lecturers' Expenses .. ..	6	15	0	
	" Leicester Chartered Accountants' Society for use of Library .. ..	5	0	0	
	" Union of Chartered Accountant Student Societies (Levy of 6d. per head, 42 members) ..	1	1	0	
	" Expenses of Joint Debates (Nottingham and London .. ..	4	13	4	
	" Printing and Stationery .. ..	6	19	6	
	" Postage and Sundries .. ..	2	5	7	
	" Testimonial to Messrs. Latham & Price ..	1	1	0	
	" <i>Accountants' Journal</i> .. ..	3	18	0	
	" Balance—Cash in hand .. ..	£0	1	0	
	" at Bank .. ..	8	10	3	
					8 11 3
					£42 17 2

#### SUMMARY OF RECEIPTS AND PAYMENTS in respect of Coaching Classes, April 30th 1906.

		<i>Receipts.</i>			
		£	s	d	£ s d
1906.	To Grant from Institute of Chartered Accountants in respect of year				
April 30.	1904-5 .. ..	30	0	0	
	Less Expenses of Classes 1904-5 ..	27	10	0	
	Balance .. ..				2 10 0
	" Subscriptions, 1905-6 .. ..				50 8 0
	" Balance .. ..				32 12 9
					£85 10 9

		<i>Payments.</i>			
		£	s	d	£ s d
1906.	By Hire of Room for Classes .. ..				3 3 0
April 30.	" Printing .. ..				0 6 0
	" Typing and Duplicating Notes .. ..				14 11 9
	" Lecturers' Fees and Expenses—				
	Dr. Tinsley Lindley .. ..	36	0	0	
	Mr. S. R. Wilby, A.C.A. .. ..	31	10	0	
					67 10 0
					£85 10 9

NOTE.—It is anticipated that this deficiency will be covered by a Grant from the Institute of Chartered Accountants.

We have audited the above accounts with the books and vouchers of the Society, and hereby certify the same to be correct.

J. R. WATSON,  
*Hon. Treasurer.*

W. S. BELL  
S. J. SKILLINGTON } *Hon. Auditors.*  
18/5/06.

On the proposition of the Chairman it was resolved that the report of the Committee and accounts be adopted.

On the motion of Mr. F. S. Heath, seconded by Mr. F. E. Dixon, it was resolved that Mr. A. P. Carryer be re-elected President for the ensuing year.

Mr. Carryer accepted the office, and in a few words assured the Society of the interest he took in its welfare.

On the motion of Mr. J. Curtis, seconded by Mr. J. R. Watson, Messrs. G. S. Bankart, A.C.A., and J. H. Baker, A.C.A., were re-elected Vice-Presidents.

Messrs. A. D. Wykes and F. H. Smith were elected Hon. Secretary and Hon. Treasurer respectively.

Mr. Heath and Mr. Watson were thanked for their services during the past year.

The following gentlemen were elected members of the Committee:—Messrs. G. A. Cooke, F. E. Dixon, F. S. Heath, H. F. Adams, and T. E. Rowlett.

Messrs. S. J. Skillington and W. S. Bell were re-appointed Hon. Auditors.

Proposed by Mr. J. R. Watson, seconded by Mr. F. E. Dixon, and resolved: That Rule 7 be amended as follows:—Instead of the words "In the month of May" to insert "in the month of June, or at the discretion of the Committee."

A hearty vote of thanks to Mr. Carryer for presiding terminated the meeting.

## The Institute of Municipal Treasurers and Accountants (INCORPORATED).

### Presidential Address.

By MR. GEO. A. THORPE, F.S.A.A.,

*City Treasurer, Bradford.*

At the Twenty-first Annual Meeting, held at Carlisle, on  
the 7th and 8th June 1906.

Gentlemen, although an expression of thanks upon one's retirement from the Presidential chair is somewhat in the nature of an established custom, let me assure you that it is no empty formality which prompts me when I ask you to accept such thanks for the honour conferred upon me at Portsmouth last year, when you elected me to preside over the affairs of the Institute during the year which is just closing.

Upon my election, I remember, I assumed for a moment the rôle of the prophet, not, it is true, upon any momentous or far-reaching issues, but upon the simple and more domestic question of loyalty to the chair in matters pertaining to the welfare of corporations represented by the Institute. That prediction has been amply fulfilled. I wish for no President greater loyalty from any Executive Council than I have received, because it has been complete and unwavering; and the same may be said of the rank and file of the Institute's members.

If I might make a reference to the Hon. Secretary, it would be to say that his work has been marked by an aptitude and efficiency which forms of speech but inadequately express. A good Secretary, however, like all good men, often finds reward in the work itself, and in the motive which prompts it.

During my year of office I have received communications from a large number of members on a variety of topics. I have been in touch with practically every member of the Institute in one form or another. This inter-communication

and interchange of opinion and experience is one of the foundation articles of the Institute's creed, and is of immense educational value and assistance in the conduct of those financial questions which are continually occupying the attention of the corporations we represent. Of course, this practice, like a good horse, may be ridden to death. The safeguard of that is, however, I take it, our individual judgment and intuitive perception of the fitness of things. Prudent men, it is said, never ask useless questions. Well, perhaps they don't. But where to draw the line sometimes between what is useless and what is useful in this world of ours is, to say the least, speculative, and even in the matter of accounting is a problem to which there is no commonly accepted solution; otherwise there were no need of departmental or other committees to hear expert evidence, which, I need hardly remind you, generally provides an elasticity of opinion sufficient to establish the proposition.

In an admittedly imperfect world it is better to err on the side of querulousness than to swathe oneself in the cerements of a deathly isolation and exclusiveness, due generally to a narrow view of life's meaning and purpose. There is no such thing in the world as independence absolutely. One may stand aside and view the battle at a distance, but then one's bread must be provided by the exertions of others. "Self-help" is commendable, so far as we understand its inner meaning, but self-alooftness is to be condemned. So far as the term stands for personal effort it must be developed for all it is worth, because upon it depends any and every form of success which is worth the name, and I make no hesitation in saying that the strength of our Institute to-day, its value and great usefulness to individual members, as well as in a collective capacity to the corporations which it represents—is due to the personal effort which has characterised members and honorary members alike in keeping alive important financial questions affecting various municipal activities with which we are from time to time concerned.

It is no exaggeration, and I do not hesitate to say it, that if the work of the Institute, in the practical assistance it affords in various ways to the public authorities it represents, could be measured in terms of currency, it would mean in many instances a saving of thousands of pounds per annum to a single local authority.

Everyone who understands the inwardness of our work, with its quiet, and yet at the same time its far-reaching, influence, will readily subscribe to the sentiment which I am sure animates us as a body—that the Institute may have a long and successful career.

This brings me within sight of one of the most interesting features of this year's gathering.

*The Institute's Twenty-first Year.*

We enter now upon our majority. Twenty-one years ago a small number of men met together to discuss matters

relating to municipal finance, and to consider in what ways they could best conserve and promote the large public interests with which they were charged. The years that have passed since that day of small beginnings have been years of stress and strain in all departments of national and municipal affairs. But stress and strain are conditions of growth continually adjusting itself to new forces, rising through struggle to meet new demands; society itself is ever developing new powers, and enriching the resources at its command. It has been so with this Institute. Few and comparatively simple were its first efforts, comparatively limited, too, its field of operations, but time opened up new spheres of activity, multiplied purposes of action, added difficulty and complexity to its tasks, and forced it to consider questions of almost Imperial magnitude. We have grown and matured through our difficulties; the effort to cope with the work which time has brought has strengthened the thews of our body politic, given greater definiteness to its aims, and more precision to its methods. And now, as we enter on manhood's estate, we may mark the years that have gone, and gathering wisdom from mistake, and courage from achievement, brace ourselves for yet greater and yet nobler conquests; this is my hope, and I cannot more fittingly express it than by taking up the time-honoured custom of such auspicious days as this, and wishing the Institute many happy returns of this year of its majority.

It is encouraging to know that during the year just closed we have admitted a larger number of members than in any previous year of the Institute's history. New members do more than increase our numbers; they bring new resources of wisdom and experience, widen the outlook, extend the interests, and inspire the Institute with courage and determination, and in your name I offer to our new members a hearty welcome to our Institute and its service.

But a still more worthy achievement has marked this year of our majority. The Southerner, taking his courage in both hands, has invaded the Scottish burghs, and we have the supreme satisfaction of enrolling this year a considerable number of Scottish officials. What more convincing proof could we desire that we are on right and wise lines? The seal of Scottish prudence has been put upon the Institute, and from this new union we may hope that the Institute may reap an advantage commensurate with that which followed on the union of the two Crowns. May I say, therefore, that with greeting and with gladness, we accord to our Scottish friends to-day a hearty welcome to our fellowship.

Another most encouraging circumstance, and which is referred to in the Council's Annual Report, is the financial position of the "Circular." Your Executive Council have within the year been able to effect certain economies in its

production, with the result that the year's work, as compared with the previous year, shows an improvement to the extent of £13 9s. 2d.; in other words, they show a surplus of £5 15s. 3d. for the year, as compared with a deficit of £7 13s. 11d. for the year previous. The "Circular" continues to grow with the expanding activities of the Institute, and is now a volume (allowing for the smaller type than formerly) equal to 380 pages, with 388 subscribers. An important feature in the "Circular" is the printing of the lectures of the London and Lancashire Students' Societies. The work of editing the "Circular" involves watchfulness and discrimination, and I am sure I may convey to the acting editor the appreciative thanks of the Institute for the care he bestows upon its production.

The work of the Examination Committee shows very gratifying results. The Committee is able to report that no fewer than 76 per cent. of the students have passed the Preliminary Examination, while as many as 68 per cent. have successfully passed the Final Examination. The work of the Committee is arduous, and involves self-denying effort; it absorbs what otherwise would mean leisure time, and on your behalf I convey the grateful thanks of the Institute to this Committee.

It is especially gratifying to note the improvement in our general financial position; the year's working shows a larger surplus than in any previous year in our history. The deficiency with which we closed last year has been entirely wiped out, and instead of it we have the encouraging fact of a surplus amounting to £61 9s. 9d.

#### *A Consolidated Rate.*

Inasmuch as a paper is to be read upon this subject by the City Accountant of Belfast (Mr. C. E. Dyer), I do not wish to anticipate any special features or details that the paper may provide, and I will therefore confine any observations I may make upon the subject to general principles; and the first thing I will say is that the country has long cried out for one consolidated rate for all local purposes. Perhaps it has not cried loudly enough. At all events, it has not reached the ears of the Legislature with that volume of sound which commands attention, and indicates *purpose* behind the appeal. The cry has been more plaintive than aggressive. Do not mistake me, I am not for a moment suggesting that Parliament should yield to clamour and importunity which has no intelligent background. It would be an undignified and unworthy Parliament if it did, but the cry for one general or consolidated rate emanates from those who have given their best and unbiassed thought to the subject. It receives the support of those who have specialised it for inquiry and report; the findings of several Royal Commissions are uniformly in favour of it; and, remember, Royal Commissions represent selected and trained intellects, with the highest

capacity for dealing with matters referred to them. Oh, no, the demand is born of intelligent conviction, after honest research as to what is right and best in the interests of the community, from a thoroughly practical point of view.

All earnest searchers after reform in Local Government finance, and especially those who are actively interested in the methods of raising revenue, have long since realised that the cumbersome and complicated machinery necessary under a dual, triple, or multiple system of rating is a dire reflection upon the inventive faculty and general business capacity of those who are directly responsible for it. Those of us who are in daily contact with the prevailing system have long felt the need, and long cherished the hope, that one *general* rate as recommended by the last Royal Commission on Local Taxation would become law, and that there would be provided one uniform percentage of exemptions (where expedient or necessary) and compounding allowances. Such a stroke of legislation would *mark real progress*, carrying with it economy, simplification, and convenience to the municipality and to the ratepayer alike; and we are led to ask, Why should such an important principle hang fire? It is no party question; politicians of all shades of opinion do not hesitate to recommend it, and yet for some inexplicable reason no real activity is manifested by Parliament to bring it into operation.

Although a number of corporations, including that of Bradford, have introduced clauses into their Bills providing for one consolidated rate, yet these clauses have invariably been reported against by the Local Government Board, who have, as a rule, suggested that the clauses be struck out, on no higher ground than that general legislation should provide for it at one stroke. But when will Parliament legislate for it? The Local Government Board have put forward no argument in justification of their suggestion to delete the clauses in private Bills. True, the Board say there is no "precedent" in any provincial town, but if absence of precedent is assigned as a reason for condemning a principle it is surely illogical. If the Board objects to a principle because it has no "precedent," while at the same time, and for the same reason, it reports against the creation of a "precedent," it can hardly be classified as an argument, but resolves itself into an unqualified plea for perpetual stagnation.

The arguments in favour of one general rate I need not enter into. They have been discussed over and over again by your Executive Council, and referred to from time to time by members at branch meetings of the Institute and elsewhere. These arguments will doubtless be emphasised in the paper we are to have upon the subject. Certain it is, there are neither physical nor economic difficulties against its adoption. Your Executive has been fully alive

to its importance for years, and resolutions upon the subject were during the last Parliament forwarded by the Hon. Secretary to the Prime Minister, the Chancellor of the Exchequer, and the President of the Local Government Board.

I am not speaking to the uninitiated upon this question. We are agreed that one rate is as good as, and better than, twenty, or even two, for obvious reasons.

The need for it is pressing and absolute; delay in this matter is becoming a fine art; and the longer we indulge the attitude of resignation, the farther away is the realisation of our hopes.

If we are agreed, then how and when shall we set the machinery in motion? The proposal is not revolutionary, but in harmony with the most enlightened views on local government finance.

It would be a historic and long-to-be-remembered day in the annals of local government if the Council of every corporate body, every representative, if need be, from the mayor downwards, would simultaneously petition Parliament to usher in this long foreshadowed measure, and establish one general rate for all local purposes, and not rest until it became an accomplished fact; to give members of Parliament no peace until it found a place on the Statute Book. If the will of the people is strong enough, and persistent enough, it will be done.

My own Council at Bradford have done what they could in the matter, but what is wanted is unanimity and continuous action until we attain our object. It may be of interest in this connection to note that the following resolution was passed by my Council in April of last year:—

"That in view of the serious administrative difficulties arising out of the rating powers exercised by overseers, this Council is of opinion that these powers should cease to exist. It therefore respectfully requests His Majesty's Government to introduce into Parliament a measure securing unification of rating powers, by vesting such powers in local authorities, and that the Town Clerk be instructed to forward a copy of this resolution to the Town Clerks of other municipalities, requesting them to bring it before their respective Councils with a view to their passing similar resolutions and forwarding them to the Municipal Corporations Association, and their local members of Parliament."

Although the wording of the resolution is not sufficiently definite to indicate one general rate, yet the context made it clear that the principle was intended.

If it be suggested that *one general rate* would throw out of gear the provisions for exemptions which are made to owners and occupiers under the two rates separately, the simple answer is that an equated exemption would be sought and found under one general rate, which would practically represent the average exemptions under two



rates. This is purely a little sum in arithmetic, and does not in the slightest degree affect the value of the principle involved in merging two or more rates into one.

*The Cost of Education, &c.*

Public attention has now been directed for more than four years to the subject of national education and its cost. This latter most important element in the problem is higher in England and Wales than it is in Germany, France, or Switzerland. We have to remember, however, that the whole standard of living is higher in this country. Teachers and professors, from the elementary school to our ancient and modern Universities, are paid on a much higher scale than obtains in the countries named. But this higher scale of pay to teachers and professors is only part of the general economic condition, the rule being that remuneration for service is higher with us than with our neighbours, and this is true through all the ranges of industrial and professional life.

The expense of education in England and Wales has been growing enormously during the last thirty years. This is partly due to the extension of its range. During a period of eighteen years—1887-88 to 1905-6—the cost for the United Kingdom has increased from £5,574,000 to £16,978,000.

Large as these sums are, they represent only Imperial expenditure. It is much more difficult to discover accurately the total amount raised by local authorities. The returns for England, Wales, and Scotland for the years 1902-3 show a total of local taxation amounting to £7,910,000. If to this the estimate for Ireland is taken, we shall not be far wrong if we put the local charges for education for the United Kingdom as amounting to nearly £10,000,000. This shows that the entire cost of our education system in Great Britain and Ireland has now reached nearly £27,000,000 per annum.

Now this charge of £10,000,000 upon local authorities in respect of education is only part of the financial burdens we are called upon to carry. Extended areas of administration and expanding ambitions of municipal life entail constantly heavier burdens, so that it has become an urgent and insistent question in what way relief to the ratepayer can be found. It is easy to take short views. Ratepayers may, if they choose, arrest the whole order of municipal life. Close your parks, neglect your roads, ignore sanitation, &c., and by so doing apparently reduce the rates; but you would also reduce the standard of health, comfort, and efficiency, and take a long stride back to barbarism. This is not a policy that would commend itself to intelligent men, and some other way of effecting the relief demanded must be found.

There are significant clues given as to the direction of relief in recent statements by the Minister for Education. An additional Imperial grant of £1,000,000 is delineated in

the Bill now before Parliament, and increased subsidies for secondary education and technical colleges have been foreshadowed. Then also the Chancellor of the Exchequer has intimated in his recent Budget speech that for elementary education purposes he is prepared to aid an education authority whose rate is in excess of 1s. 6d. in the £ by a grant equal to three-fourths of the excess.

In the course of the discussion upon his Budget speech on 30th April last, and in reply to a question as to the basis of apportionment of the sum of £135,000 as a special grant to meet the cases of heavily rated school districts, Mr. Asquith said:—

“The principle upon which the Government are proceeding is this: In the case of an education authority whose expenditure to be met by the rate exceeds the produce of a 1s. 6d. rate, a grant will be made out of the Exchequer of three-fourths of the excess.

“Take, for example, West Ham: There the expenditure to be met by rates in excess of the 1s. 6d. rate is £63,612, and there will be a special grant of £47,709, with the result that the rate which is now 29.9d. will be reduced to 21.9d. In East Ham the expenditure in excess is £21,916; the special grant of three-quarters will be £16,437, with the result that the present rate of 29.2d. will be reduced to 20.8d. In Walthamstow the excess is £22,000 odd, and the special grant of £16,000 will reduce the rate from 30.6d. to 21.1d. At Edmonton the excess is £13,000; the grant will be £9,700, and the reduction from 33d. to 21.7d.”

The broad division of the grant shows that county boroughs will receive £64,700, non-county boroughs £22,580, and Urban Districts £47,800. This, however, is but a drop in the bucket for the majority of heavily-laden authorities. Still it indicates that the sense of national responsibility for the whole system of education is growing. In the case of elementary education it is compulsory both as to quality and quantity. It is supervised by the State, and the action of local authorities is very narrowly limited; they can exercise little or no discretion in relation to it.

Now these things indicate that the nation is awakening to a realisation of the full meaning of the fact that education is a national function. Education affects the quality and efficiency of the whole body of British citizenship, and no argument is needed to prove that this is a national interest of unspeakable importance. Of no other part of municipal activity can this be affirmed with such overwhelming force, and the proposition put forward by not a few authorities, that so great a national function should be taken up in its entirety by the nation through its Imperial Parliament, is one which I venture to suggest is not easy to controvert. There are, no doubt, difficulties attendant upon such a policy, but the immense burden of

rates, the fact that education estimates of local authorities must necessarily grow for years to come, the urgent justice of the demand of the ratepayer that he be relieved of some part of his burden, the fact that education is far more really than any other part of municipal administration a national interest and function, go to show that in this direction relief should be found. This is no doubt a bold and heroic remedy, but the plea for its consideration is the fact that the ratepayers' case is growing desperate.

In dealing with local education rates, it must be borne in mind that they cannot be viewed apart from other local burdens, and when these have risen to the point in some cases of over 9s. od. in the £, even the most ardent municipaliser must admit that a condition of almost intolerable strain has been reached. The demand for relief cannot be resisted, and inasmuch as education is the chief national function which the ratepayer is called upon to aid through his rates, the case for relief is sufficiently strong to demand immediate consideration and practical recognition.

Before leaving this subject, although it may appear in the nature of a detail, I should like to urge the desirability of merging the grants made by the Board of Education into one consolidated grant for elementary education. There appears to be no justifiable reason why the annual grant, the fee grant, and the fixed portion of the aid grant should not be merged and paid by the Board of Education as one grant.

#### *Uniformity of Accounts.*

This time-worn subject brings no new development except that action has somewhat taken the place of speech in the appointment of a Departmental Committee, the terms of reference to which may be understood to include it. As an Institute we were ever agreed as to its importance, as our annual records testify. At this stage, however, I may not anticipate the work of the Committee, or enter into any detailed plea for its adoption, but, speaking generally with regard to uniformity as a principle, everyone must admit its importance and value in any work where the aims and intentions are identical, and in the case of local authorities' accounts (which affect in a sense every member of the community) by reducing the work of recording financial transactions to a uniform system, a wider and deeper interest is undoubtedly awakened and established by virtue of the facilities with which comparisons may be made as between one local authority and another.

The ability to readily compare financial operations and results through the establishment of a uniform system, stimulates the spirit of inquiry and research into causes, and at the same time promotes, consciously or unconsciously, a healthy rivalry in the attainment of maximum results with a minimum of effort and cost.

As to the particular line which uniformity should take, it may be difficult to suggest a scheme in all its completeness, which could be made applicable to all local authorities alike, having regard to distinctive legislative enactments which govern different classes of local authorities—county councils, urban and rural district councils, parish councils, and municipal boroughs. But apart from any special provision in the arrangement and order of accounts which may be imposed by existing statutes or Local Government Board regulations, certain broad features on uniform lines might easily be introduced and made common to each.

#### *Municipal Trading.*

The keen controversy which has for so long attracted public attention upon this topic is, to say the least, in no sense edifying. It is doubtful whether the case is not generally presented to the public in such form as tends to confusion rather than enlightenment.

As a question for study and mastery on its purely economic side, it is rarely taken up. It would be refreshing to see a really scientific disquisition on the subject, for we should then have essentials disentangled from prejudice, and often from much personal bias.

Upon the relative merits of opposing parties, whose only aim is victory at any cost, it is seldom if ever worth while to arbitrate, although one may sometimes be driven to defend one's position because it happens to be attacked.

If municipal trading is condemned wholesale by the private trader because, as an individual, he suffers, then surely the basis of argument must be widened, for municipal trading grows logically out of the fact of incorporation, and has become recognised as a legitimate function of corporate life.

On the other hand, if the zealous municipaliser wishes to sweep all before him, and embark upon all and sundry schemes and undertakings, in hot competition with the private trader, whose livelihood under such competition must necessarily be jeopardised, because he is undersold, while as a ratepayer he is pledged to bear his proportion of any deficit arising from any cause whatsoever, then, again, we say the position demands an unbiassed consideration of the private capitalist's relative position to the community from the ratepayers' point of view.

The "justice"—which we sometimes say—"should be done though the heavens fall" necessitates a deeper search and a more patient inquiry than usually accompanies the rough and ready methods which are resorted to in a comparison of the merits of municipal *versus* private trading.

I am not, however, concerned for the moment in the discovery of economic or other laws, the observance of which would level social inequalities or solve the "riddle of the universe," for that were "a door to which I found no

key." My aim is rather to show that, assuming municipal trading was limited to admitted monopolies—such as water, gas, and tramways—its opponents, either wilfully or unknowingly, withhold one important factor which in any comparison between municipal and private trading should be writ large, and that is *the annual purchase year by year of the undertaking through the operation of the sinking fund*, which is a statutory obligation imposed upon municipalities, but which is none the less clear profit, and a feature which must never be lost sight of in any comparison between the profits of private and municipal trading. If the private trader leases his premises and simply pays an annual rent for twenty or thirty years, the premises still belong to the lessor at the end of the period, whilst, on the other hand, a municipality would have paid out of its profits not only the interest to mortgagees, which is equivalent to the lessee's rent, *but have paid for the premises in addition*. Bradford has, by the operation of its sinking fund, completed the purchase of one of its public baths. Who will tell me that is not clear profit to the municipality from a comparative point of view with the profit of the private trader? Profit always appeals to the business instinct of the British subject, and once let him understand its significance divorced from technicalities which obscure the truth, *that by the sinking fund he is purchasing a house for himself*, then I venture to think that any further comparison of the *net* profits of municipal trading with the *trade* profits of private industries will afford him more *amusement* than *concern*. When the opponents of municipal trading ignore the sinking fund, they forfeit (with intelligent men at least) the very confidence they wish to inspire. Misrepresentation—even from a selfish point of view—is as impolitic as it is unwise. Let society, either in this or any other public question, realise that vital facts are obscured or suppressed, and faith loses its foothold. The sinking fund of the corporation gradually and surely pays off the whole of the borrowed capital, after which the ratepayer becomes the absolute owner of the property which he has created. That property becomes thenceforward a profit-making power; it creates wealth for the community, promotes their comfort, and raises the common standard of life. Careful administration will always provide adequate sums for unseen shrinkage and contingencies, with other charges which commercial prudence suggests and demands; but subject to that the ratepayers possess in their municipal trading departments a wealth-producing agency whose power is limited only in proportion as we fail to recognise that economic principle at which all good government aims—namely, "the greatest good of the greatest number."

#### *Income-tax.*

The long-continued warfare between corporations and the Inland Revenue Department upon this subject is, we

have reason to hope, within sight of settlement. What is known as the Leeds Test Case provides for that important feature for which quite a number of corporations have been contending so long—namely, the right of a corporation to be regarded as one entity for income-tax purposes, irrespective of the question of "security" (consolidated or otherwise) which is afforded to mortgagees.

The Leeds case was selected in the first place by the Law Committee of the Association of Municipal Corporations, because it was regarded as possessing in the consolidated security it afforded to mortgagees an element of strength which might appeal to the judicial mind.

By Section 37 (1) of the Leeds Corporation (General Powers) Act, 1901, it is enacted "that all principal moneys shall be charged indifferently upon the lands and estates the water the gas and other the undertakings of the corporations and upon all the revenues of the corporation and each and all such principal moneys or any of them whether raised or owing before or after the passing of this Act together with the dividends interest annuities and all other annual sums (being hereinafter referred to as 'dividends') shall rank equally and *pari passu* without any priority or preference by reason of any precedence in the date of any statutory borrowing power or in the date of the raising of the money or in the date of the money becoming owing or in the date of the security issued or given in respect thereof or on any other ground whatsoever."

Your Executive Council, however, who have had the matter under consideration, felt that "security" was not the last word to be said upon the subject. If the "security" argument prevails with the Courts, and a favourable decision is given in consequence, it will leave untouched and unassisted a large number of corporations who have not yet obtained the Leeds clause in their local Acts, and who are not therefore on all fours with Leeds *so far as the security question is concerned*, but who nevertheless are contributing towards the litigation fund in the proportions of their respective rateable values.

That the "security" argument is not paramount is supported by the conclusions which appear to have been arrived at by the Law Committee of the Association of Municipal Corporations, as embodied in their report prepared by the Town Clerk of Scarborough (Mr. Nicholl). And also of the Law Committee's contention as expressed in the letter of their Secretary (Mr. Pritchard), addressed to various Town Clerks throughout the country. In the report Mr. Nicholl, after patiently following all the details of the London County Council case—which case gave the income-tax question a fresh impetus—and after a careful analysis of the judgment thereon, and allowing for all the possible and reasonable interpretations of it, declares—if

not in so many words, yet in essence—for a pooling of the funds.

Mr. Nichol says:—

"Putting the case from the point of view of the persons who are really responsible for the payment of interest on stock and debt—namely, the ratepayers as a whole—the result is practically the same to them whether certain specified payments are made out of the borough fund or out of the district fund. Notwithstanding the distinction in favour of agricultural land, the ratepayers in respect of both funds are practically identical, and the determination as to whether certain moneys are paid out of the district fund or out of the borough fund, or out of revenues, or out of rates, is from their point of view merely a matter of theory. It seems, therefore, somewhat of an anomaly that the real payers of income-tax—namely, the ratepayers—should be called upon to pay a larger amount of such tax, because certain statutory provisions theoretically assign some specific liabilities primarily to the district fund, and other specific liabilities primarily to the borough fund, although, as a matter of fact, such liabilities are charged upon both funds and are payable by identical persons."

In his letter to various Town Clerks throughout the country, Mr. Pritchard says:—

"The Law Committee have given the matter further consideration, and are now engaged in taking the opinion of eminent counsel upon the questions involved, and (subject to their advice) they propose to select a test case, or, if necessary, two or more test cases, which would raise the points in the most satisfactory manner with the view to obtaining an authoritative decision in the Courts, applicable to the circumstances of as many corporations as possible."

Put shortly, the contention of the Law Committee is that "the Inland Revenue authorities are wrong in their present practice of assessing each undertaking separately, and of allowing a corporation to retain only so much of the tax deducted by them from interest on loans raised for the purpose of each undertaking as is paid out of the profits of such undertakings, but that, speaking generally, a corporation should be regarded as one entity although carrying on several businesses, and therefore entitled to retain from the amount deducted from interest a sum equal to the whole of the income-tax paid by the corporation in respect of the whole of their properties and undertakings."

Why should we depart from this view and put a premium upon "security"? To a certain extent the Leeds case is identical with the London County Council case, and yet the Commissioners declare for *departmentalism*. The Inland Revenue authorities have advised all surveyors of

taxes that unless interest were *paid out of* profits and gains by actual transfer of the money in the accounts—as though there were some virtue in the stroke of a pen—there can be no relief, which is tantamount to saying that a corporation must be split up into as many entities as there are departments for income-tax assessment.

If "security" is a secondary matter, as some of us believe it would be so determined if the question of a corporation's liability to income-tax were fought upon its merits—*i.e.*, without regard to the question of "security"—then it seems policy to promote a test case upon these lines, because if it prevailed it would win for all corporations alike, while if it lost it would leave unfettered any corporation with special statutory provisions relating to "security" to fight its case on that question alone.

This view of the matter was submitted to a conference between certain members of the Law Committee of the Association of Municipal Corporations and a Sub-Committee of your Council, with the result that the Leeds case, in addition to the "security" question, now includes that feature for which many of us have contended, the right to be regarded as one entity independent of the question of "security." A view which we hope to see sooner or later ratified by the Courts.

A word upon the "Circular." May I remind you that closely allied with the work of the Institute is its literature. The "Circular" is undoubtedly a power for good; its value in storing up important knowledge bearing on the financial and other interests of corporations cannot be too highly emphasised. Every organisation is more and more dependent on its literature. It is by this means that it justifies its existence to that outer world wherein its work lies. Through its literature it keeps in touch with the growing and expanding energies of the community, and thus secures intelligent appreciation and sympathy for the Institute and its purposes. Let members bear in mind the importance of assisting the editor with contributions as they may find opportunity.

Among the varied questions which members of the Institute have at heart may be mentioned the securing, where possible, for local authorities, any new sources of civic revenue. The urgency of this is demonstrated with added force every year. Municipal activities are spreading on every side, and, despite the cavilling of captious and interested opponents, they are bound to grow. Their growth is the sign of the deepening sense of the corporate life of the community; a growing consciousness of society's power, through its representative institutions, to lift up the standard of personal, domestic, and national life. But the improvements thus indicated cost money, and it is clear that the time has come when definite efforts should be made to acquire for the public service a large proportion of that enormous wealth created by public money and

enterprise. One method of approaching that ideal is the taxation of land values. Under what conditions and limitations is not yet clear, but the principle has justified itself to the public conscience as essentially wise and equitable, and we may confidently expect that at no distant date it will become part of the practical politics of Parliament.

But the translation of ideals into institutions and laws is part of the task of all constructive statesmanship. We may pass academic resolutions at annual meetings, but we must learn to act, not as students and administrators only, but also as responsible citizens, whose true aim should be the art of living well together in society, and of building up a social order in which every resource of advancing civilisation shall be directed to the supreme purpose of making it easy for the citizen to do right and difficult to do wrong. We must, by every means that experience can suggest, urge this ideal, with all the practical measures that tend to its realisation, on the attention of local and Imperial authorities. Every year the influence and power of these authorities is growing. More and more of the life of the individual and of society is passing under their influence and control. That these governing powers should be well informed and wisely directed is a matter on which the very stability of society depends. To aid in their instruction and guidance, to impart to them force and inspiration, is part of that great work to which this Institute should devote its energies and experience. If it does this wisely and rightly, it will become more than a gathering of trained experts. It will have justified its existence as an assembly of thoughtful and skilful officials who hold up before themselves as a first consideration, and as the first object of their care and solicitude, the well-being of society as a whole.

Gentlemen, I thank you for the patience with which you have listened for so long to my remarks, and again for the honour, kindness, and consideration you have extended to me.

## Extending the Time for Registration of Debentures.

(From *The Solicitors' Journal*.)

THE provisions of Section 14 of the Companies Act, 1900, with reference to the registration of debentures, and of Section 15, under which an omission to register within the prescribed period of twenty-one days can, under certain circumstances, be rectified, have naturally been productive of numerous applications to the Court, and it was speedily settled that no rectification could be allowed to the prejudice of rights already acquired at the date of actual registration—a proviso the meaning of which has come in question in the recent case of *Re Ehrmann Brothers*,

*Lim.*, before Joyce, J. Section 15 provides that a Judge of the High Court, on being satisfied that the omission to register in due time was accidental, or due to inadvertence or some other sufficient cause, or was not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it was just and equitable to grant relief, might, on such terms and conditions as seemed to the Judge just and convenient, order the time for registration to be extended. In *Re Joplin's Brewery Co., Lim.* (50 W.R. 75; 1902, 1 Ch. 79) Buckley, J., referred to the analogous provision of Section 14 of the Bills of Sale Act, 1878, under which a Judge of the High Court has power to extend the time for registering a bill of sale, and pointed out that it had been the practice, in making orders at Chambers under this section, to introduce the words "but this order is to be without prejudice to the rights of parties acquired prior to the time when the bill of sale is actually registered," and since applications under both sections are made without notice to creditors, he held that a similar proviso ought to be added to orders made under Section 15 of the Companies Act, 1900.

In the next case—*Re Spiral Globe, Lim.* (50 W.R. 187; 1902, 1 Ch. 396)—an attempt was made to show that the cases on Section 14 of the Bills of Sale Act, 1878, did not warrant so extensive a proviso as that inserted in *Re Joplin's Brewery Co.*, and that it was sufficient to protect the rights of creditors who had become such after the date of the issue of the debentures. In *Crew v. Cummings* (36 W.R. 908, 21 Q.B.D. 420), where an execution creditor had intervened, and in *Re Parsons & Furber* (41 W.R. 468; 1893, 2 Q.B. 122), where the grantor of the bill of sale had become bankrupt before its registration, the Court refused to interfere, on the ground that the property in the goods had changed, and that it would not be right to rectify a mistake after a third party had acquired a title. But Swinfen Eady, J., declined to see in these cases any ground for restricting the proviso in question. Their principle, he said, was not limited in its application to those cases in which the ownership of or property in goods or chattels had actually changed; it extended to cases in which the rights of third persons had actually accrued and in which they would be prejudicially affected if registration were allowed without saving and protecting those rights.

In *Re Spiral Globe, Lim.*, a voluntary winding-up had supervened after the issue of the debentures and before the application for an extension of time for registration, so that the proviso would have deprived the registration of any practical value; but the rights of the debenture-holders were saved by the subsequent decision of Joyce, J.—*Re Spiral Globe, Lim.* (No. 2) (1902, 2 Ch. 209)—that, under the circumstances, the debentures were to be taken as issued, for the purpose of registration, before the Act

of 1900 came into operation, so that registration was not required—a result which has been in effect overruled by subsequent cases. But the decision in the earlier case of *Re Spiral Globe, Lim.*, was followed by Buckley, J., in *Re Abrahams & Sons, Lim.* (50 W.R. 284; 1902, 1 Ch. 695), where also a voluntary winding-up had commenced before the application for an extension of time. On a liquidation, the learned Judge pointed out, the rights of all creditors attached, and he could on no principle take away their strict rights. An innocent creditor who had neglected to complete his security could not be allowed to take away the rights of other innocent creditors. However, some doubt was cast by the Court of Appeal in *Re Johnson & Co., Lim.* (50 W.R. 482; 1902, 2 Ch. 101) on the extent to which the cases had gone, and it was said that the cases on the Bills of Sale Act, 1878, did not require protection to be given except in favour of creditors who had taken some step to enforce their debts before the application for extension of time. "The analogy of the Bills of Sale Act," said Cozens-Hardy, L.J., "which Buckley, J., took in *Joplin's* case seems to me to be very close and precise, "but, speaking for myself, I doubt whether the words "which he has inserted—which are a mere transcript of the "common form under the Bills of Sale Act—would have "any effect in protecting creditors who had not taken some "proceeding to get a charge or security upon the goods."

In *Re Johnson & Co. (supra)* the special feature was that certain debentures of a series had been issued before the Act of 1900 came into operation, so as not to require registration, and other debentures of the same series were issued after the Act came into operation, but were not registered in due time. In making an order for extending the time for registration, the Court of Appeal introduced special words so as to secure equality between all the debentures of the series, but, subject to this, there was the usual proviso that the order was to be without prejudice to rights acquired against the holders of the second set of debentures prior to the time when they were actually registered. No actual decision was given as to the class of creditors who were thus protected, and the Court of Appeal did no more than make the suggestion above-mentioned. In the subsequent case of *Re Anglo-Oriental Carpet Manufacturing Co.* (51 W.R. 634; 1903, 1 Ch. 914) Buckley, J., observed that the words of the proviso in the order in *Re Johnson & Co.* had the same effect as those used in the *Joplin Brewery* case, and he held that, where a winding-up had occurred after the date of the order extending the time for registration, but before actual registration of the debentures, the rights of the general creditors had accrued, and the debenture-holders could only claim to rank with them as unsecured creditors. The words of the proviso, whatever their precise limits, clearly included and saved the right which the creditors acquired on the passing of the

winding-up resolution to have the assets realised and distributed among them *pari passu*.

In the recent case of *Re Ehrmann Brothers, Lim. (supra)*, no winding-up had occurred before the actual registration of the debentures under the order allowing an extension of time, but Joyce, J., held that this made no difference, and that all unsecured creditors whose debts existed at the date of actual registration were within the proviso, and were entitled to rank *pari passu* with the debenture-holders. In 1900 a company created a series of debentures intended to rank *pari passu*. Some of this series were issued before the Act of 1900 came into operation, and some after. Those issued after the Act came into operation were not registered within the twenty-one days, and by an order made on the 24th of July 1903 the time for registration was extended to the 14th of August 1903. The order contained the usual proviso that it was to be without prejudice to the rights of parties acquired against the holders of the debentures in question prior to the time of actual registration. The debentures were registered before the extended date. In a debenture-holders' action an inquiry was directed as to which of the unsecured creditors of the company at such date of registration still remained unsatisfied, and upon further consideration the question arose whether such creditors ranked with the debenture-holders whose debentures had been registered under the order. Joyce, J., treated *Re Anglo-Oriental Manufacturing Co. (supra)* as showing that the proviso debarred the debenture-holders from taking priority over persons who were unsecured creditors before the registration. Had he been unfettered by authority, he would have been disposed to say that the ordinary unsecured creditors did not acquire any rights against the holders of the debentures unless they acquired rights against the property charged by the debentures. Since this was the view suggested by the Court of Appeal in *Re Johnson & Co.*, it is perhaps singular that the learned Judge did not act upon his own opinion instead of following *Re Anglo-Oriental Carpet Co.*, especially since he pointed out some of the inconveniences that might follow; and since, moreover, there had been no winding-up before registration, such as had occurred in that case. He held, however, that it was immaterial to Buckley, J.'s, decision whether the registration was before or after the winding-up. In this state of affairs it seems not improbable that the Court of Appeal will have a chance of saying whether the views advanced in *Re Johnson & Co.* are to be taken as limiting the effect of the proviso or no.

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### Personal.

MR. CHRISTOPHER G. COATES, Chartered Accountant, announces that he has commenced practise at 206 Gresham House, Old Broad Street, London, E.C.

MESSRS. HARDY, HISLOP & Co., Chartered Accountants, announce that they have removed to 49 Finsbury Pavement, E.C.

## Failures and Bills of Sale in England and Wales.

ACCORDING to *Kemp's Mercantile Gazette*, the total number of commercial failures recorded in England and Wales during the week ending Friday, June 22nd, was 178, viz.:—New Bankruptcy Proceedings published in the *London Gazette*, 88; Deeds of Arrangement registered, 90. The respective numbers in the corresponding week of last year were: Bankruptcies, 98; Deeds of Arrangement, 59—total, 157; being an increase of 21. The total number of commercial failures recorded during the 25 weeks of the present year is 4,170; the total number recorded in the corresponding 25 weeks of last year was 4,432, showing a decrease of 262.

The number of Bills of Sale, including Re-registrations, filed in England and Wales for the week ending Friday, June 22nd, was 137. The number in the corresponding week of last year was 137 also, showing no alteration. The total number filed during the 25 weeks of the present year is 3,739; the total number filed in the corresponding 25 weeks of last year was 4,152, showing a decrease of 413.

## Debentures.

The Mortgages and Charges registered by limited companies in England and Wales during the week ending Friday, June 22nd, amounted to £1,246,127, by way of addition to £1,117,635, previously issued by the same companies. The amount registered in the corresponding week of last year was £892,175, showing an increase of £353,952. The total amount registered during the 25 weeks of the present year was £40,821,816 (in addition to the issues in previous years by the same companies), as compared with £37,021,642 for the corresponding 25 weeks in 1905, showing an increase of £3,800,174.

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## Bank Rate of Discount.

Sept. 28th 1905 .. .. .	4%
April 5th 1906 .. .. .	3½%
May 4th .. .. .	4%
June 21st .. .. .	3½%

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During the year ended 31st March 1906, Relief was granted in 29 cases to the amount of £876 7s. 6d.

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# The Accountant

## Law Reports

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Note as to the references in the following Reports. L.R.—Law Reports; Ch.D.—Chancery Division; K.B.D.—King's Bench Division; W.N.—Weekly Notes; T.L.R.—Times Law Reports; L.J.—Law Journal Reports; L.T.—Law Times; S.J.—Solicitors' Journal.

### ***Accountancy and Auditing.***

#### **LORD MAYOR'S COURT.**

December 20.

(Before Mr. BOSANQUET, K.C., Common Serjeant, sitting without a jury.)

#### **Youldon v. Avon.**

*Accountant's Charges—Termination of Engagement—Payment in Lieu of Notice.*

Mr. Charles Youldon, an accountant, sued Mr. E. Avon, a cycle and motor accessories merchant, of Long Lane, for £16 19s. for professional work done. The sum claimed was made up of three items—15 guineas, less £3 paid on account, for making out a Profit and Loss Account for the defendant, and preparing a Balance Sheet for the years 1902, 1903, and 1904; one guinea, a month's fee for supervising the defendant's books, and posting his Private Ledger; and £3 3s., three months' salary in lieu of notice. The plaintiff detailed the circumstances under which the work was done. The Balance Sheet was made out in September of last year in order to obtain a reduction of the income-tax. There was no definite agreement as to the charge, but the plaintiff was engaged for 69 hours on the work, and the result was a saving to the defendant of about £18. The fees charged, it was said, were fair and reasonable. For the defendant it was denied that the plaintiff's work had resulted in a reduction of the tax by £18, while it was said that the fee agreed for that particular work was £3, which had been paid. The guinea claimed for a month's supervision of the books was paid into Court. As to the claim for salary in lieu of notice, it was said that the engagement was put an end to in consequence of the defendant's refusal to do the work.

#### **JUDGMENT.**

The Common Serjeant gave judgment for the plaintiff for £14 17s., including the amount paid into Court.

(City Press.)

#### **BIRMINGHAM ASSIZES. NISI PRIUS COURT.**

December 19 & 20.

(Before KENNEDY, J.)

#### **Moore v. Braithwaite, Jackson & Co.**

*Libel—Reply to Trade Enquiry—Publication.*

A libel action was brought by William Henry Moore, Chartered Accountant, of Walsall, against Braithwaite, Jackson & Co., timber merchants and contractors, of Hull.

In opening the case, Mr. Young said the issue between the parties was whether Mr. Moore really ought to be in the dock as a criminal for conspiring to obtain goods from the defendants by false pretences. That was a very serious libel on a man who occupied an important position in Walsall as an accountant, debt collector, and commercial inquiry agent. Part of his business was that of the Walsall Saddlers' and Leather Merchants' Association, and he also acted as trustee in bankruptcy in many cases. There had never been any complaint about his conduct as a trustee. The libel had reference to his dealings with a builder named Lynex, who was an undischarged bankrupt, and had served two months' imprisonment without hard labour for an offence against the bankruptcy law as long ago as 1887. Evidently most of his creditors sympathised with him in his misfortune, for they continued to supply him with goods when he traded under his wife's name. In 1897 he had a big building contract with Captain Harrison. There was a dispute between them as to the extras, and so large a sum of money was locked up that Mr. Lynex had to call his creditors together and execute a deed of assignment. Mr. Moore, the plaintiff, and Mr. Scott, of Hull, were appointed trustees, and they carried on the litigation with Captain Harrison. It was a long and expensive litigation, and in the end the amount recovered by Mr. Lynex was swallowed up in costs. The result was that Mr. Lynex's estate became insolvent, but his second wife raised sufficient money from her friends



to purchase the business, which was then carried on in the name of Mary Anne Lynex. To enable her to build cottages on land which she had leased, Mr. Moore lent her several sums of money on mortgage. Unfortunately for him, he acted as his own surveyor, and in February 1905 he found that he had been lending more money than the state of the property justified, and he then refused to lend any more. Consequently Mrs. Lynex had to call her creditors together, and a receiving order was filed on February 5. The transactions between Mr. Moore and Mrs. Lynex then became open to inspection, but the trustee in bankruptcy found nothing wrong with them. The defendants had, however, made allegations in regard to these transactions, and a report which the plaintiff made to Mr. Scott, of the Timber Trades Association Inquiry Agency at Hull. The allegation was that, in order that Mr. or Mrs. Lynex might obtain timber from the defendants, the plaintiff gave a false account of the position and antecedents of Lynex. He entirely repudiated this allegation. At the time when he sent his report to Hull Lynex was doing very well. He had just made a profit of £800, and was in a position to make a further profit of £504 on property which he had built. The report which came into the hands of the defendants was as follows:—"Re M. A. Lynex, Walsall.—This is really 'Alfred Lynex, trading in his wife's name. He has been 'in business upwards of twenty years, and, as you know, 'executed a deed of assignment about three years ago as 'executor of Jane Lynex, deceased. He is doing better 'now, and has been building cottage property worth '£1,500, and is now building eleven houses in the same 'street. In these operations he is being financed by our 'Mr. Moore. Payments are on the slow side, but we 'believe him to be in a better position than he has been 'for a long time, and consider £150 a reasonable risk as a 'limit.' That was a true statement of the position of Lynex's affairs at the time the report was written. He made no reference to the fact that Lynex was an undischarged bankrupt, and was convicted in 1897, because the report was sent to Mr. Scott, who had acted as co-trustee with him in regard to the affairs of Lynex, and knew as much about Lynex's antecedents as he did. That conviction did not affect the credit of Mrs. Lynex, and it would have been unfair to her to have gone into something which her husband had atoned for. In March of the present year Mrs. Lynex made an arrangement with her creditors, and consequently the plaintiff, on March 28, wrote to the defendants, stating that the plaintiff had decided to complete the properties, and would require building materials, for which he (plaintiff) would undertake to pay, and asking for prices of materials.

In reply, the defendants wrote to Mrs. Lynex the letter complained of, which was as follows:—"We have your

"letter of the 3rd inst., and, noting contents, we are not 'desirous of doing any business with you or with Mr. 'Moore unless we have the actual cash in our hands before 'the goods leave our yard. The regrets that you express 'as to the 'very sudden and unexpected turn of events' 'are little more than impertinence, as you must have 'known very well that the manner in which you have lent 'yourself to what has been little less than a conspiracy to 'obtain goods without any intention to pay for them could 'only end as it has ended. The affair is not ended yet, 'however, and by the aid of the law some rather startling 'developments may yet be seen.' That was the libel. The defendants denied writing it, and also denied that it applied to the plaintiff, and then they attempted to justify it. He contended that there was nothing in the plaintiff's dealings with Lynex to justify such allegations.

The plaintiff went into the witness-box and gave evidence in support of his counsel's statement.

Cross-examined by Mr. Disturnal, he admitted that he had had to pay £200 damages for slandering a Walsall surveyor. In that case he indiscreetly told a third party that he was going to call a meeting of creditors. It was a grave indiscretion, and it cost him £2,000. It was a fact that he afterwards prosecuted the plaintiff and the chief witness in that case for perjury, and that prosecution broke down. He had had 24,000 inquiries pass through his hands, and his reports had never previously been called in question. As a debt collector he, before making the report, had had to act for one of Mrs. Lynex's creditors, but it was only in respect of a small amount, which was disputed. When he made his report it did not occur to him that it would be to his interest that Lynex should get credit. It was to his interest that Lynex should finish the property, but he did not care whether he got his materials on credit or paid cash for them. At that time he was satisfied that his mortgage was well secured and that Lynex's position was sound. It was a fact that he signed the plans as owner of twelve out of the fifteen houses erected by Lynex. He did that because the land in those cases belonged to him, and because Lynex told him it was the usual way to get the plans passed by the corporation.

The plaintiff was in the witness-box four hours.

Mrs. Lynex, to whom the alleged libellous letter was written, was cross-examined by Mr. Vachell. She said she bought the business from the trustees of her husband's estate for £1,400. She got £60 of it from her father, and £20 from her brother. The rest of the money came out of the business. That was to say, she collected book debts and used up the stock-in-trade, and thus raised money to pay out the trustees.

Mr. Lynex was also examined at length as to his business transactions on behalf of his wife.

In opening the defendant's case, Mr. Vachell said every-

body who had considered the circumstances of the case, had seen Mr. Moore in the box, and had heard the evidence, must feel certain that what reputation Mr. Moore might have had in Walsall had not suffered one jot from the alleged libel, and that the plaintiff's only object was to put as much money in his pocket as possible at the expense of the unfortunate gentlemen living in Hull, who already had been such heavy losers by reason of their transactions with Lynex, the friend of the plaintiff. The letter complained of did not even come to the notice of the Official Receiver. The jury were to be asked to award the plaintiff heavy damages for the ruin Moore's character had suffered, and yet if they had to consider damages at all they must weigh them by what loss of reputation they thought Moore had suffered in the eyes of the only person to whom the alleged libellous letter was addressed; that person was Lynex, one of the warmest partisans that even Moore could desire. The truth of the whole matter was that the plaintiff had tasted the sweets of litigation. He had been in that Court thrice, and had seen how easily the sum of £200 might be made in almost as many minutes, and he had been seized with an enthusiasm to try that method of making money for himself. When this letter was written the defendants had not the slightest intention of referring to Mr. Moore, for at the time they did not know much about him. He invited the jury to consider whether the extraordinary building transactions between Mr. Moore and Mr. Lynex were not carried out mainly for Mr. Moore's benefit. He contended that with the connivance of Mr. Lynex the plaintiff had recklessly heaped up mortgages, which the creditors would have to pay off before they could get a penny of the money to which they were entitled.

Harold Pravener Jackson, the defendant, who carries on business as Braithwaite, Jackson & Co., was examined at length by Mr. Vachell as to the events that led up to the writing of the letter in question. With regard to that letter, he said that nothing in it after the first paragraph had reference to Mr. Moore. The second paragraph referred to the way in which Lynex and his wife had mixed up their business affairs, which, he thought, amounted to little short of a conspiracy between them. He had no intention of including the plaintiff in that allegation.

Cross-examined by Mr. Hugo Young, the defendant said that from inquiries made by his solicitors since the action commenced, he believed that if he had made that allegation with reference to the plaintiff it would have been true. He did not suggest that the plaintiff had any interest in Lynex's business beyond his mortgages on the houses Lynex was building.

#### JUDGMENT.

After hearing other witnesses, and the speeches of

counsel, the Judge summed up. He said it struck him as curious that the plaintiff should not have seen at the outset that it was dangerous for him, as an inquiry agent, to make a report on the financial position of the builder whom he was financing. On the other hand, it was suggested by Mr. Hugo Young that as he disclosed the fact that he was financing Lynex he was in as good a position to make a report as anyone else. The plaintiff's case was likely to suffer by the deplorable practice of drawing documents which did not represent things as they were. He had a reason to give for what had been done in this case, but in all cases it was best to speak the truth in the documents. Any other course was likely to bring trouble on innocent persons who might come into possession of the documents. To put down Mrs. Lynex's name as the architect, and that of Mr. Moore as the owner of houses which Mr. Moore was building, might be good enough to pass the local building authority, but it was obviously untrue and misleading. The danger was that one disliked that sort of thing so much that it tended to make one doubt whether the man who did this sort of thing acted honestly in other things. With regard to the question of costs, he pointed out that a libel written in a letter to a friend of the plaintiff could not injure the plaintiff so seriously as a libel that was printed and circulated broadcast.

The jury deliberated for about an hour, and then returned a verdict for the plaintiff, with a farthing damages. They added a rider to the effect that they considered the plaintiff had entirely cleared his character.

Mr. Vachell applied for costs.

His Lordship thereupon asked the jury whether they, in awarding a farthing damages, wished to express the opinion that the case ought not to have been brought into Court.

The foreman of the jury said that was not their intention.

His Lordship therefore made the usual order as to costs.

(*The Birmingham Daily Post*.)

## Bankruptcies and Insolvencies.

### COURT OF APPEAL.

December 15.

(Before VAUGHAN WILLIAMS, STIRLING, and COZENS-HARDY, L.JJ.)

*In re Brindley; ex parte Taylor & Co.*

*Bankruptcy—Petition—Threat of Legal Proceedings—Attempt to obtain Secret Advantage—"Sufficient Cause"—Accepting Benefit under Deed of Assignment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 7, subsec. 3.*

This was an appeal from a decision by Mr. Justice Bigham and Mr. Justice Walton, sitting as a Divisional

Court (reported 33 *Acct. L.R.* 45), allowing an appeal against the refusal of the Registrar of the County Court of Staffordshire, holden at Hanley, to make a receiving order in these circumstances. On September 8 1905 J. W. Brindley, a timber merchant, executed a deed of assignment of his property to C. E. Bullock, as trustee, for the benefit of his creditors generally; and the deed was duly registered. At the end of the deed was the following clause:—"And it is hereby agreed and declared that if the trustee in his own discretion shall think it expedient to do so, or if a committee of inspection shall be appointed by the creditors, then if a majority of such committee shall so direct it shall be lawful for the trustee to pay in full, or otherwise than by dividends under these presents, any creditor or creditors who shall decline to execute or assent to these presents." At the date of this deed the appellants, Messrs. Taylor & Co., were creditors of the debtor to the extent of about £694 for goods supplied. In answer to a circular convening a meeting of the creditors to be held on September 15, Messrs. Taylor & Co. on September 11 wrote to Messrs. Alcock & Co., the solicitors of the debtor and also of the trustee under the deed as follows:—"We have your circular of the 7th inst. relating to Mr. J. W. Brindley, and, as requested, we enclose you heads of accounts showing his indebtedness to us. Towards the end of July your client was here and stated that if we would give him up to a certain time he would pay us the amount of a bill for £132 15s. 10d. that had become due on July 14, and if we would supply him with certain goods, which he was then prepared to order, he would pay cash for them in a month, less 2½ per cent. This dishonoured bill has not been in any way paid for, though a cheque for £25 was sent to us on account, the payment of which was later stopped. The goods were supplied to the extent of £100 15s. 1d., towards which no payment has been made as promised. Both these items are in the hands of our solicitors, Messrs. Quiggin & Co., and we will not consider any arrangement other than payment concerning them, but for the other items in the account we will be prepared to consider anything that is in the best interests of your client and that may appear acceptable to the general body of creditors. We will not be present at the meeting and our solicitors have instructions to press the actions they have in hand." At the same time Messrs. Taylor & Co. wrote to the debtor as follows:—"In reply to your circular, we have already written to your solicitors, in response to the circular announcing the meeting, that we have instructed Messrs. Quiggin to press the matter of the dishonoured bill of July last that you promised to pay by a date that you fixed yourself, and to also press for payment of the goods amounting to £100 15s. 1d. that you obtained from us on

"the distinct understanding that you would pay cash in a month, less 2½ per cent. We will not listen to any terms respecting these two items of our account, but shall press respecting them until we obtain payment, or, failing that, the obvious alternative. But, concerning the other items, we have told them we are quite prepared to consider any terms that may be considered reasonable and proper by your creditors." Further correspondence passed, and on September 25 Messrs. Taylor & Co. presented a bankruptcy petition against the debtor grounded on the deed of assignment as the act of bankruptcy, and on September 27 they wrote the debtor as follows:—"In reply to yours of yesterday, it is certain that the petition in bankruptcy will not be heard before to-morrow, and as far as our information goes it will not be heard for possibly seven or eight days, but we have a letter from Messrs. Alcock & Co. this morning asking us to sign the deed of assignment, and we have replied that we will not do so, for, without in any way being hostile to you, we have endeavoured to make you and them quite clearly understand that we will not take any composition or agree to any assignment unless we have the two items we have referred to paid in full." It appeared that subsequently to the deed of assignment Messrs. Taylor & Co. supplied the trustee with certain timber ordered by him, and which he paid for by a cheque which they duly cashed. On October 6 the petition was heard by the Registrar, when he refused to make a receiving order, on the ground that the above correspondence between the debtor and the petitioning creditor showed that the petitioning creditor had used every exertion to obtain an undue preference as to payment in full of part of their debt, and further that they had acquiesced in the deed of assignment by continuing to trade with the debtor's trustee. Against that decision Messrs. Taylor & Co. appealed.

In a considered judgment the learned Judges of the Divisional Court expressed themselves unable to adopt the Registrar's construction of the undisputed facts of the case, and allowed the appeal. Accordingly a receiving order was made against the debtor. From that decision the debtor appealed.

#### JUDGMENT.

Their Lordships allowed the appeal.

Lord Justice Vaughan Williams said that the principle on which the authorities rested was that if a man treated a deed as being an honest deed and one which could not be impeached, and he, so treating it, took an advantage under it, it was impossible that he should ever be allowed afterwards to say that that deed was void. Now, in the present case it was clear on the evidence that what the petitioning creditors, Messrs. Taylor & Co., did amounted to a recognition that this deed conferred a good title on the trustee, so as to preclude them from saying that the deed consti-

tuted a fraud on creditors; for it appeared that they accepted an order for timber from the trustee and received payment for it by a cheque which they cashed. And his Lordship held that in other respects they had recognised the deed. They were, therefore, bound by their acts, and the proper order was to allow this appeal, for the receiving order ought not to have been made, because the petitioning creditors had by their acts so recognised the title of the trustee under the deed that they could not afterwards be heard to say that it was a void deed.

Lord Justice Stirling was of the same opinion. It appeared that the petitioning creditors, knowing of the creditors' deed, invoiced a certain amount of timber to the trustee of that deed, describing him as "trustee." The trustee then sent them a cheque for the goods, which cheque they cashed, and they put the money in their pockets. How, in such circumstances, could they present a petition on the ground of that deed being an act of bankruptcy, and say that the deed was void as against themselves and the other creditors? It was impossible to maintain such a proposition. The deed had been treated by them as a good deed, and they could not now turn round and both approbate and reprobate, treating the deed as good for one purpose and not for another.

Lord Justice Cozens-Hardy was of the same opinion and for the same reasons. But he wished to add that the last clause in the deed, empowering the trustee either at his own discretion, or on the direction of a majority of the committee of inspection, to pay in full any creditor or creditors who should decline to execute or assent to the deed, was a most improper one and might go far to invalidate the deed altogether.

(22 *Times Law Reports*, 155.)

#### COURT OF APPEAL.

December 15 and 18.

(Before WILLIAMS, STIRLING, and COZENS-HARDY, L.JJ.)

*In re A. W. Mills & Co.; ex parte The Debtors.*

*Bankruptcy — Assignment of Debtors' Property — Assent of Petitioning Creditor — Further Act of Bankruptcy — Estoppel.*

Appeal from decision of Mr. Registrar Giffard, who made a receiving order against the debtors.

On July 28 1905, at a meeting at which the petitioning creditor was present, a resolution was put to the meeting and passed that the debtors should execute a deed of assignment of all their property for the benefit of their creditors. The petitioning creditor neither assented to nor dissented from this resolution.

A nominee of the debtors was proposed as trustee of the deed. The petitioning creditor then said that he did not consider it proper that a nominee of the debtors should be

appointed, and suggested another name which was adopted by the meeting.

On July 28 the petitioning creditor served on the debtors a bankruptcy notice founded on a judgment in the King's Bench Division which the debtors failed to comply with. He presented the petition grounded on the debtors' failure to comply with the motion.

It was contended that the petitioning creditor was estopped from obtaining a receiving order by his conduct at the meeting of July 28, which amounted to a consent to the deed of assignment.

The debtors appealed from the order of the Registrar.

#### JUDGMENT.

Their Lordships held that though the respondent might by his conduct have been prevented from availing himself of the execution of the deed of assignment as an act of bankruptcy, yet he had not put himself in such a position as to be precluded by the deed from petitioning and obtaining a receiving order upon some other act of bankruptcy. They considered *In re Stracy* (1867, 36 L.J. Rep. Bank. 7; L.R. 2 Ch. 375) an authority in the respondent's favour.

Appeal dismissed.

(L.J. 868.)

### Company Law.

#### HOUSE OF LORDS.

December 15.

(Before Lords MACNAGHTEN, ROBERTSON, and LINDLEY.)

**The British Equitable Assurance Company  
v. Bally.**

*Company—Life Assurance.—Participating Policy-holders—Power of Company to Alter Constitution by New Articles.*

When a person takes out a policy in a life assurance company, and the policy contains no reference to the prospectus, the contract is contained in the policy itself; and unless fraud or mistake be alleged, the prospectus cannot be referred to for the purpose of construing the policy.

#### JUDGMENT.

Their Lordships, after consideration, reversed the decision of the Court of Appeal (73 L.J. Rep. Ch. 240; L.R. 1904, 1 Ch. 374).

(L.J. 867.)

#### HOUSE OF LORDS.

December 15.

(Before the Earl of HALSBURY, Lord ROBERTSON, and Lord LINDLEY.)

**Calthorpe and another v. Trechmann and another.  
Macleay v. Tait.**

*Company—Prospectus—Misrepresentation—Omission to State Contract—"Knowingly Issue"—Liability of Directors—Waiver Clause—Companies Act, 1867 (30 & 31 Vict. c. 131), s. 38.*

These two appeals dealt with the non-disclosure of material contracts in a prospectus on the formation of a company,

and in particular with section 38 of the Companies Act, 1867. The defendants in both actions were directors of the Standard Exploration Company. This company was promoted by the Globe Company, and the prospectus of the Standard stated that in the formation and issue of that company there were no promoters' profits, and this was shown to be true. But there was a contract of October 1898 between the Globe and Standard companies not disclosed in the Standard Company's prospectus, which, however, was not intentionally omitted by any of the directors defendant in these actions, although material within the 38th section of the Companies Act, 1867. The plaintiffs took shares on the faith of the prospectus, and suffered loss, and the question reduced itself to this—Have the plaintiffs in these actions suffered damage by reason of the non-disclosure of the contract of October 1898? It was the opinion of their Lordships that the non-disclosure of this contract had not caused any damage to the plaintiffs or any of them. The Court of Appeal found the defendant directors liable.

#### JUDGMENT.

The House reversed this decision.

The Earl of Halsbury in the course of his judgment said: The plaintiffs complain that they have been injured by the fraud of the defendants and claim damages for the loss they have sustained by the fraud of which they complain. But for section 38 of the Companies Act, 1867, neither of these actions could have been brought, and the real question is whether this section did more than enact that where a contract which ought to have been inserted is omitted, that such omission shall be held to be fraudulent. Under this section, I think, to enable a plaintiff to recover damages he must convince the tribunal before whom the question comes that if he had known of the omitted contract he would not have become a shareholder, and in these two cases the non-disclosure did not make any difference in the plaintiff's conduct. As to the waiver clause, where there is an honest slip, as here, it would apply.

Lords Robertson and Lindley agreed (the latter in a long and exhaustive judgment dealt with the whole subject), and both appeals were allowed.

(50 S.J. 125.)

## Income Tax.

### HOUSE OF LORDS.

December 19.

(Before the Earl of HALSBURY, LORD ROBERTSON, and Lord LINDLEY.)

### Curtis (Surveyor of Taxes) v. The Old Monkland Conservative Association.

*Income-tax—Claim for Exemption—Unregistered Company.*

This appeal was from a judgment of the Court of Session

in Scotland, and raised the question whether the respondents—the Monklands Conservative Association, being not a body politic or corporate, but a voluntary association of persons contributing to a common fund, and having a joint interest in their common property—were entitled to be exempt from income-tax, their income for the year not exceeding £160. This was said to be a test case.

The respondents were assessed to the income-tax under Schedule A in respect of £65, the annual value of the premises occupied by them at Coatbridge. They claimed exemption, and the Commissioners decided in their favour, but stated a case, setting out the facts for the opinion of the Court, who affirmed the decision of the Commissioners. Hence this appeal by the Crown. The appellants contended that the exemption from the tax did not apply to an unincorporated society.

#### JUDGMENT.

Lord Robertson, in giving judgment, referred to the different sections of the Act of 1842 bearing upon the point, and came to the conclusion that the charge was rightly made on the Association, and that the true question was whether the Association was entitled to the exemption. He thought it was not, and therefore he was for allowing the appeal. He accordingly moved that the appeal be allowed.

The Earl of Halsbury said that having had an opportunity of reading the judgment of Lord Robertson, he entirely concurred with it. He also stated that Lord Lindley was of the same opinion. The appeal was therefore allowed.

(Times.)

### KING'S BENCH DIVISION.

December 8.

(Before WALTON, J.)

### John Hall, Junr. & Co. (Appellants) v. Rickman (Respondent).

*Revenue—Income-tax—Depreciation of Ships—Power to take into account Allowances in former years—Income-tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Schedule D., Case 1, Rule 3—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 12.*

This was a case stated by the Commissioners for the General Purposes of the Income-tax Acts, and raised a question as to the proper allowance for depreciation in the value of steamboats in assessing the appellants, the owners, under Schedule D.

The material parts of the case were to the following effect:—The appellants carried on business as shipowners in London and also a coal-bunkering business at Gibraltar under the name of the Union Coal Company. They returned their gross profits for the year ended April 5 1901 as £20,227 15s., and as £20,721 7s. 8d. for the year ending 1902, based on an average of three preceding years, and were assessed accordingly, no allowance being made

by the Commissioners in respect of depreciation in the value of the appellants' steamers through wear and tear. Before the Commissioners they claimed certain deductions for both years, but, for the purposes of this case, only the figures for the year 1901 need be given, those for the year 1902 depending on the same considerations. The allowance claimed was in respect of depreciation through wear and tear in the value of the steamers, a list of which was set out in the case, during the year 1900, and was as follows:—Six per cent. on £51,843 17s. 2d.—i.e., £3,110 12s. 7d. The sum of £51,843 17s. 2d. was the sum entered in the appellants' books as the value of the steamers on December 31 1900. This was made up of £41,843 17s. 2d., the written-down value entered in the appellants' books on January 1 1900, plus £10,000, the purchase-price of the "Peninsula," bought in 1900. The value on January 1 1901 was entered in the appellants' books as £48,733 4s. 7d., being the written-down value after deducting £3,110 12s. 7d. for depreciation at 6 per cent. from £51,843 17s. 2d. The average age of the steamers during the years of assessment was 31 years. By 5 and 6 Vict., c. 35, s. 100, Schedule D, Case 1, Rule 3, "In estimating the balance of profits and gains chargeable under Schedule D or for the purpose of assessing the duty thereon no sum shall be set against or deducted from or allowed to be set against or deducted from such profits or gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, manufacture, adventure, or concern, nor for any sum expended for the supply or repairs or alterations of any implements, utensils, or articles employed for the purpose of such trade, manufacture, adventure, or concern beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made." By the Customs and Inland Revenue Act, 1878 (41 and 42 Vict. c. 15), section 12, "Notwithstanding any provision to the contrary contained in any Act relating to income-tax, the Commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern, in the nature of trade chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern and belonging to the person or company by whom the concern is carried on." The appellants' firm was founded in 1830, and was not incorporated. It was admitted that the appellants, prior to the said year of assessment, had been allowed by way of deduction for depreciation as above sums amounting in the aggregate to not less than 96 per cent. on the first or prime

cost of the vessels, including such sums as had been expended prior to the first of the years of assessment upon the same vessels by way of additions or repairs other than ordinary annual repairs. The ordinary annual repairs had been from time to time allowed in each annual account delivered for income-tax purposes as an expense chargeable against profits. The break-up value of the vessels was considerably more than 4 per cent. of the first or prime cost. The appellants contended that they were entitled to deductions in respect of the wear and tear during the year 1901, and that for the purpose of ascertaining this regard should only be had to the value at the year, and a just and reasonable percentage thereon taken as representing such depreciation. The Commissioners decided that the appellants were not entitled to the allowance. The same question was raised as to a hulk belonging to appellants. This was formerly a sailing ship, but had been dismantled and used as a floating warehouse. It was contended in addition by the respondent with regard to the hulk that it was not "plant" within the meaning of section 12 of the Customs and Inland Revenue Act, 1878.

Mr. Asquith said that the contention on the other side—viz., that more than 100 per cent. had already been allowed for depreciation—was on the face of it absurd, for the amount must necessarily always be something less than 100 per cent. He submitted that the fact that in past years the appellants had received the above allowances was not a circumstance to be taken into consideration, and that it was the duty of the Commissioners to follow the directions in section 12 of the Customs and Inland Revenue Act, 1878. He cited *Cunard Steamship Company v. Coulson* (1895, 1 Q.B. 865). The hulk was "plant"—*Yarmouth v. France* (19 Q.B.D. 647), *Carter v. Clarke* (78 L.T. 76).

The Solicitor-General contended that, as the said allowances plus the present value of the vessels amounted to at least 100 per cent. of their prime cost, the appellants had, in fact, or ought to have, something in hand to represent the vessels at prime cost, and that there was therefore nothing to depreciate in value. The fact that the sums allowed had not been so put by the appellants made no difference. The ships were, as it were, dead, as their average life was estimated only at 28 years. He cited *Peninsular and Oriental Steam Navigation Company v. Leslie* (4 Tax Cas. 177).

Mr. Hill replied.

#### JUDGMENT.

Mr. Justice Walton, in giving judgment, said that the question in this case was whether any allowance should be made to the appellants in respect of diminished value by reason of wear and tear during the period of assessment of certain vessels. The claim was based on section 12 of the Customs and Inland Revenue Act, 1878, the year

of assessment beginning on April 5 1900. The Commissioners had found that the allowances already made to the appellants were just and reasonable as sufficiently representing the diminished value of the vessels by reason of wear and tear, and that, having had these allowances made to them in the past, the appellants were not entitled to any further allowance in the future. The foundation for that decision was that the Commissioners had during a period of years made as allowances to the appellants in respect of wear and tear sums which in the aggregate amounted to 96 per cent. of the original value of the vessels, and that their breaking-up value amounted to more than 4 per cent. of such original value, and that, therefore, the owners of the vessels, the appellants, had before April 5 1900 received more than their original value if the allowances were added to their present value. They had held, therefore, that at that date they could not suffer any further loss by way of depreciation. The life of a ship was assumed to be 28 years, and consequently these ships ought to be treated as if they were dead. The difficulty arose from the fact that they were not. The contention of the Commissioners was not an unreasonable one in itself, but what he had to do was to decide only what was the effect of the Act of Parliament. Of course, the case would have been different if anything in the nature of an agreement between the appellants and the Commissioners was set up, but none was suggested here. It was not denied that during the year in question the value of these vessels had diminished by reason of wear and tear, and, that being so, he thought the Commissioners must consider to what extent that had gone, and what was a just and reasonable allowance in respect thereof, and he did not think they were entitled to take into consideration the former allowances, but ought only to consider the allowance due for the assessment period. With respect to the other point raised, nothing had been said by the Solicitor-General. He was of opinion that the hulk was "plant" within the meaning of the section. The appeal must be allowed.

(22 *Times Law Reports*, 131.)

## Partnerships.

### CHANCERY DIVISION.

December 15.

(Before KEKEWICH, J.)

**Rowden v. Parker.**

*Partnership—Speculative Undertaking—Laches—Termination of Partnership—Account.*

This was an action by the plaintiff, James Rowden, for a

Partnership Account. By a building agreement made in the year 1903 the defendant agreed to take a lease of building land at Shepherd's Bush and build some fifty houses thereon. By a deed of partnership dated the 28th of April 1904 the plaintiff and defendant entered into a partnership for a period of two years for the purpose of carrying out the building undertaking. The plaintiff was a builder and supervised the actual building while the defendant provided the necessary moneys and paid the plaintiff a weekly sum of £2 5s. It was provided by the deed of partnership that each partner should bank in their joint names a sum of £800, but this in fact was not done. On the 16th of July 1904, while some of the houses were in course of erection, the defendant dismissed the plaintiff from the works. The plaintiff thereupon left the premises and took no further part in the undertaking. Subsequently it became evident that the undertaking would be a success financially, and on the 24th of March 1905 the writ was issued in this action. The plaintiff contended that there was a partnership which was dissolved by the defendant's dismissal of the plaintiff on the 16th of July 1904, and thereupon the plaintiff was entitled to an account. The defendant alleged that the plaintiff had been guilty of *laches*, that the action had not been brought until the success of the undertaking was assured, and that none of the plaintiff's money had been risked in the scheme, which was of a speculative nature. The title to all the property involved was merely equitable, and the Court would not give relief in a case of this nature.

### JUDGMENT.

Kekewich, J., in giving judgment, said: I think what occurred in July 1904 must be treated as being in substance a dissolution. If the plaintiff had refused, the defendant could not have dissolved the partnership, but the plaintiff accepted the dismissal, and from that time ceased to act as a partner. In July 1904 in an account the balance would have been against the plaintiff; nine months later, when he finds that the defendant by a considerable expenditure of money has assured the success of the undertaking, the plaintiff commences this action and makes a claim that the property should be valued in the light of recent events. Is he entitled to do that? The time is short, but the property is purely speculative, and in considering the question of *laches* this is an element that must be taken into account. In my opinion the plaintiff is really, in bringing this action, trying to take advantage of his own *laches*. A partner cannot lie by and allow others to spend money and then oust them from the position they have gained by their industry. There must be judgment for the defendant with costs.

(50 S.J. 140.)

**Law Reports.****Company Law.****CHANCERY DIVISION.**

December 19.

(Before BUCKLEY, J.)

***In re Calgary & Edmonton (Limited and Reduced).****Company—Reduction of Capital—Registration of Minute—Form.*

Petition by the above-named company for confirmation by the Court of a special resolution for reduction of capital, and for approval of the minute to be registered under Section 15 of the Companies Act, 1867.

The form of minute proposed was as follows: "The capital of the Calgary and Edmonton Land Company, Lim., is henceforth £211,321 5s., divided into 241,510 shares of 17s. 6d. each, instead of the original capital of £241,510, divided into 241,510 shares of £1 each. Such reduction has been effected by returning to the holders of the said 241,510 shares, all of which have been issued and are credited as fully paid up, capital to the extent of 2s. 6d. per share, and by reducing the nominal amount of all the shares from £1 to 17s. 6d. fully paid."

The petition came on for hearing on December 12, when R. Younger, K.C., and H. C. Bischoff, for the company, submitted that the order might be made at once, and that the minute was in proper form, although the 2s. 6d. per share had not, in fact, yet been repaid, for that so soon as the resolution was passed and the reduction sanctioned by the Court each share was of the lesser amount, but the amount by which it was reduced was a debt due from the company.

Buckley, J., intimated that the Court would confirm the reduction, but reserved judgment on the form of the order, and gave liberty to commence repayment of 2s. 6d. per share at once.

**JUDGMENT.**

Buckley, J., on December 19th, made an order, subject to production of evidence that 2s. 6d. per share had been repaid, that the reduction be confirmed, and approved the minute when altered by omitting the last paragraph beginning "such reduction has been effected," and substituting the words "at the time of the registration of this minute the sum of 17s. 6d. has been and is to be deemed paid up upon each of the said shares," the order to be post-dated accordingly.

(L.J. 870.)

**CHANCERY DIVISION.**

December 20.

(Before JOYCE, J.)

***Redfern v. The Manchester Assurance Company.****Company—Bonds—Redeemable—Terms of Redemption—Mistake.*

Action for declaration that certain bonds were redeemable only on certain terms, or alternatively for rectification of

the bonds by bringing their conditions into accordance with an agreement of July 23 1896.

In 1896 the Cambridge University and Town Fire Insurance Company sold its undertaking and assets to the defendants in consideration of a payment of 10s. in cash for each 10s. paid share in the Cambridge Company, and in addition a preference 10 per cent. bond for 10s. redeemable (a) at par at the end of fifty years; (b) at the option of any of the shareholders of the Cambridge Company on six months' notice at 20s. per bond, such option to be exercised within three months of the confirmation of the purchase; (c) at the option of the defendant company on six months' notice at 30s. per bond. These terms were embodied in a provisional agreement and subsequently confirmed, with certain modifications, by the agreement of July 23 1896. Bonds were afterwards issued, as the plaintiffs alleged, in pursuance of the agreements, and were accepted by the shareholders in the belief that they were in accordance with the terms of such agreements. The bonds, in fact, were indorsed with certain conditions, one of which provided that the principal sum secured should become immediately payable if an order should be made or an effective resolution passed for the winding-up of the defendant company. In May 1904 the defendant company sold its undertaking to the Atlas Assurance Company, and went into voluntary liquidation for the purpose of carrying out the agreement for such sale.

The defendants now contended that they were entitled to redeem the bonds on payment of their face-value. The plaintiffs, on the other hand, argued that the defendants were only entitled to redeem upon paying three times that value.

**JUDGMENT.**

Joyce, J., said he could not entertain any serious doubt that the bonds had become payable at the nominal amount or face-value, and were not merely redeemable at the higher rate of three times as much, if, indeed, a stipulation that they should, in the event of a winding-up, be redeemable only at the higher rate, would have been legal and valid. With regard to the claim for rectification, there was not, in his Lordship's opinion, any such common mistake as would be requisite to support the claim on the ground of mistake, nor was it proved by the evidence that there was any conduct amounting to fraud on the part of the defendants or their agents. The action, therefore, would be dismissed with costs.

(L.J. 886.)

**CHANCERY DIVISION.**

December 20.

(Before JOYCE, J.)

***McMillan v. The Le Roi Mining Company.****Company—Meeting of Shareholders—Voting—Poll—Voting by Polling Papers—Validity.*

Motion on behalf of the plaintiff and all other shareholders of the defendant company except the directors for



an injunction to restrain the company from acting upon any resolution purporting to be passed by means of polling papers used as votes of the members signing the same on a poll demanded at a general meeting of the company.

The meeting in question was held on December 8 1905 to consider an amalgamation scheme, and resolutions were put to the meeting which were carried or lost by a show of hands. The chairman then demanded a poll, and directed that the manner of taking the poll should be by polling papers, signed by the members, that the place should be the office of the company, where the polling papers were to be delivered by a certain date. By Article 94 of the company's articles of association it was provided that votes might be given either personally or by proxy, and Article 87 provided that if a poll was demanded it should be taken in such manner and at such time and place as the chairman of the meeting should direct. The question raised on this motion was whether voting by means of polling papers, as directed by the chairman, was valid.

#### JUDGMENT.

Joyce, J., said that *prima facie* a shareholder, in order to vote, must attend and personally give his vote unless there was some statutory or other provision entitling him to vote in a different manner. It was clear from the articles that a shareholder must vote either personally or by a properly constituted proxy. The voting papers which had been issued were not in accordance with the articles. The chairman might give directions as to the manner of voting, but that did not entitle him to enlarge the power of voting. The mode of taking the poll by voting papers was unauthorised and invalid, and the defendants must be restrained from acting upon the result of the poll so taken.

(L.J. 7.)

#### CHANCERY DIVISION.

December 21.

(Before SWINFEN-EADY, J.)

#### **Boschoek Proprietary Company, Lim. v. Fuke.**

*Company—Director—Qualification Shares—"In his own right"—Income-tax on Directors' Fees—Ratification by Company of position of Managing Director—Knowledge of Facts—Notice convening Meeting.*

This was an action brought by the plaintiff company against the defendants, Francis George Fuke and Cuthbert Oliver Rigby, two of the late directors of the company, claiming a declaration that the payment of certain moneys made by the defendants whilst directors was wrongly made, and that the moneys so paid ought to be made good by the defendants to the plaintiff company. The case, which raised several important questions of company law, was argued on November 30, December 1, 2, 4, and 5 last,

when judgment was reserved. The facts sufficiently appear from the judgment.

#### JUDGMENT.

Mr. Justice Swinfen-Eady delivered judgment as follows:—The object of this action is to establish that the defendants are jointly and severally liable for alleged misapplication of moneys of the plaintiff company, and to enforce repayment. The principal defendant is Francis George Fuke, and the main ground of complaint against him is that, being liquidator of a company which held nearly all the share capital of the plaintiff company, he obtained the appointment of himself as managing director of the plaintiff company at an extravagant salary of £700 a year, when there was really no business whatever to manage, and no board duly constituted to appoint him, and when he himself was not even qualified to be a director in accordance with the articles, and that he has obtained payment of this amount although the event upon which £500 a year out of the £700 a year was to become payable has never happened, and that the transaction has never been duly ratified by the company. There are other claims as to a sum drawn for income-tax and as to a payment to the defendant Rigby of directors' fees. The plaintiff company was registered on November 20 1895, with a nominal capital of £360,000 in £1 shares. Of this amount, £300,000 was issued as fully paid to the vendors—the Heidelberg Estates and Exploration Company, Lim. The remaining £60,000 (other than seven shares agreed to be taken by the subscribers to the memorandum) is unissued. The plaintiff company acquired certain property and mining claims in the Transvaal. It had not any subscribed cash capital, but in or previous to 1899 it had borrowed from the Heidelberg Company £17,500, for which it had issued debentures. The defendant F. G. Fuke was appointed secretary of the plaintiff company on April 24 1896, and received a salary of £100 a year. On February 27 1900 the Heidelberg Company went into voluntary liquidation, and the defendant Fuke was appointed liquidator. At that date the only property of the Heidelberg Company consisted of the 276,000 shares of the plaintiff company, then held by it, and £17,500 debentures of the plaintiff company; but it had also a claim against certain persons in respect of which an action was afterwards brought by the liquidator, and 500 shares in the plaintiff company, which form an important feature in this action, were recovered by the liquidator. These shares were in August 1901 transferred to "F. G. Fuke, liquidator of the Heidelberg Estates and Exploration Company, "Lim.," and in September 1901 he was registered as a shareholder in the plaintiff company accordingly. On October 1 1901 the position of the board of the plaintiff company was that Vincent Frost was that day appointed a director in the place of George Bush, who retired; and

that James Polkinghorne and John Procter were the only other directors. The latter retired on October 9 1901, leaving only Vincent Frost and James Polkinghorne as members of the board. On December 4 1901 these two directors purported to hold a board meeting and pass the following resolution:—"That Mr. Francis George Fuke be, and is hereby appointed, managing director of the company at a remuneration of £700 per annum for a period of two years, and to be at liberty to retain his position as secretary of the company at a salary of £100 a year, provided that the said Francis George Fuke draws only at the rate of £200 per annum, as managing director, until the working capital of the company of £60,000 or part thereof has been subscribed." From that day to this not one farthing of the working capital or unissued capital of £60,000 has been subscribed, but the defendant Fuke has obtained the whole sum of £700 per annum for a period of upwards of three years, less an amount which I will presently mention. At the date of this resolution the interest on the plaintiff company's debentures was in arrear for two or three years; it had exhausted its borrowed money except £950 on deposit and a sum of under £100 on current account. According to Fuke's evidence there was "nothing to manage," except to endeavour to procure funds as working capital. He says that about November 1901 the first suggestion was made to him by Polkinghorne that he should be managing director to enable him to negotiate for working capital; that he was present at the board meeting on December 4 1901, when Polkinghorne and Frost suggested to him that he should receive £1,000 a year. He thought that sum rather high, and said so, and retired from the room. He then returned to the room, and the two directors then offered him £700 a year, which he accepted. He added that it was at his suggestion that as the company had not the funds it was resolved that he should only draw £200 a year until further working capital had been subscribed. This resolution is, in my opinion, invalid. By article 64 the number of directors should not be less than four. By article 77 the directors were to be entitled to receive by way of annual remuneration a maximum sum of £500, with a percentage of profits (if any), such remuneration to be divisible as the board might determine. The articles do not contain any provision enabling the board to appoint any managing director. Under these circumstances it was quite beyond the powers of the two remaining directors to appoint a third person (even if qualified to be a director) to be managing director of the company at a salary of £700 a year. The question, however, has been raised as to whether Fuke was qualified to be appointed a director. By article 75 any occasional vacancy in the office of director may at all times be filled up by the board by the appoint-

ment of a qualified member. By article 66 the qualification of a director is the holding in his own right of at least 250 shares, and by article 72 every director shall vacate his office on ceasing to hold his qualifying number of shares. It was contended that article 66 only required a qualification in the case of the first directors appointed by the subscribers to the memorandum, but, having regard to articles 72 and 75, this contention is not in my opinion well founded. Then was Fuke "a qualified member"? The 250 shares which are claimed as a qualification were entered in the company's register as follows:—"Francis George Fuke, liquidator of the Heidelberg Estates and Exploration Company, Lim., 167 Winchester House, Old Broad Street, London." Did Fuke hold these shares "in his own right"? In *Bainbridge v. Smith* (41 Ch.D. 462, 474), Lord Justice Lindley pointed out that the phrase "holding shares in his own right" had acquired a conventional meaning, and added, "I think that conventional meaning is this—that a person 'holding shares in his own right' means holding in his own right as distinguished from holding in the right of somebody else. . . . It means that a person shall hold shares in such a way that the company can safely deal with him in respect of his shares, whatever his interest may be in the shares." I therefore ask myself these two questions—(1) Did Fuke hold in his own right, as distinguished from holding in the right of somebody else; and (2) could the plaintiff company have safely dealt with him in respect of these shares, whatever his interest in the shares might be? In my opinion the first question should be answered in the negative. Fuke held the shares in right of the Heidelberg Estates and Exploration Company, Lim., and not in his own right. Suppose he had been described on the register of the company as "F. G. Fuke, trustee of A. B., a bankrupt," or as "F. G. Fuke, executor of C. D., deceased," in neither case would he have held shares in his own right, but in the former case in right of the bankrupt, and in the latter in right of the testator. So in the present case the description of him on the register as "liquidator of the Heidelberg Estates and Exploration Company, Lim.," shows that he holds the shares in right of that company, and in his capacity of liquidator of that company. If, on the other hand, he had been registered as "F. G. Fuke, of, &c., accountant," he would have held the shares in his own right within the meaning of the decisions, although he might in fact have been trustee of a bankrupt, or executor of a deceased person or liquidator of a company. In the present case I am not considering whether it is usual or proper for a shareholder to be put upon the register with the description "trustee of A. B., a bankrupt," or "executor of C. D., deceased," or "liquidator of the X Company." I am only considering what is the effect of such a registration. I am also of opinion that the second

question, previously mentioned, should be answered in the negative. The plaintiff company could not safely deal with Fuke in respect of the 250 shares, whatever his interest might be in the shares, as they had notice that he held them as liquidator of the Heidelberg Company. Suppose the plaintiff company had taken them as a security for an overdue debt owing by Fuke personally, could the company have pleaded that they took them in good faith, and without notice that they belonged to the Heidelberg Company, of which Fuke was liquidator? Certainly not; the plaintiff's own register shows that it is as liquidator of the Heidelberg Company that the shares stand in Fuke's name. In like manner, if the shares had been registered "F. G. Fuke, executor of C. D., deceased," the plaintiff company could not have taken them by way of security from F. G. Fuke for a private debt of his own, and then successfully contended that they had no notice that Fuke was only entitled to the shares as executor of a deceased person. If, on the other hand, the shares had been registered simply "F. G. Fuke, of, &c., accountant," then the plaintiff company could have safely dealt with Fuke on the footing that he held the shares in his own right, even though in point of fact he might have held them as executor of a deceased person or liquidator of a company. See also *Sutton v. English and Colonial Produce Company* (1902, 2 Ch. 502). I decide, therefore, that the 250 shares were not a qualification for Fuke within the meaning of the articles. The next question is whether the plaintiff company in general meeting have duly confirmed, ratified, and sanctioned the payment which has been made to Fuke. What happened after the passing of the resolution of December 4 1901 was this. James Polkinghorne, one of the directors, died on August 19 1902, and Vincent Frost parted with his qualification shares. Accordingly, on January 28 1903, a board meeting was held, at which the defendant Fuke alone was present, and the secretary was directed to inform Frost that his transfer of 250 shares had been registered, and to draw his attention to article 72. Thus Vincent Frost disappeared from the board, and the defendant Fuke was left in sole possession, and he claimed to be sole director, although in my opinion he was not a director at all. On February 2 1903 he purported to hold a board meeting, at which he alone was present; he passed certain transfers of shares, including a transfer of 250 shares to the defendant Rigby, and 250 shares to himself, and he thereby for the first time acquired a qualification, but he was not afterwards elected a director. On the next day, February 3 1903, he held a board meeting, and purported to appoint as directors of the company, jointly with himself, Mr. Thomas Hughes, and the defendant Rigby. Mr. Hughes resigned his seat in the following June; Mr. Rigby is a gentleman nearly 70 years of age, and said that this was his first and last experience of any com-

pany. When first asked by Fuke to become a director in November 1902 he had no interest whatever in the company, but afterwards paid £25 for the 250 shares, the transfer of which was passed by Fuke on the day preceding Rigby's appointment as director. The first act of the board so constituted is thus recorded in the minutes—"February 5 1903. Present:—F. G. Fuke, managing director, in the chair, T. Hughes, C. O. Rigby. It being stated that it is usual for the tax on managing directors' fees to be paid by the companies, it was resolved that the sum of £8 4s. 3d., income-tax on the managing directors' fees, be paid out of the funds of the company." Another board, similarly attended, was held on February 9 1903, when the only business was drawing a cheque for income-tax on the fees of three directors—Fuke received £8 4s. 3d. This transaction is, in my opinion, quite unjustifiable. Even if the board had been duly constituted, they would have had no right whatever to take out of the company's moneys the sums which each director ought to pay out of his own money for any income-tax properly payable by him. The defendants are jointly and severally liable for this misapplication of the moneys of the company, and must repay the amount with interest. I now proceed to consider the alleged confirmations by the company in general meeting of Fuke's position and salary. Questions were raised as to the validity of the past acts of the directors; the opinion of counsel was taken, certain alterations of the articles were recommended, and on May 14 1903, at a board meeting, the secretary was instructed to convene a general meeting of the company for May 25 1903. The plaintiffs have objected to the validity of any resolutions passed at this meeting on two grounds. The first ground is that there was no duly constituted board which could validly convene a general meeting of the company. This meeting was called by the only persons acting as directors, and the persons who for upwards of three months had been acting as the board; the resolution for calling it was passed at a board meeting; notice of it was duly sent to every shareholder, and one of the objects of the meeting was to confirm the acts theretofore done by persons purporting to act as directors. Under these circumstances, I must consider any informality in convening the meeting as a mere irregularity, and not sufficient to invalidate any resolution passed at it. The case is governed by *Browne v. La Trinidad* (37 Ch.D. 1), *Southern Counties Deposit Bank v. Rider* (73 L.T. 374), and *British Asbestos Company, Lim. v. Boyd* (1903, 2 Ch. 439), rather than by *In re Haycraft Gold Reduction and Mining Company* (1900, 2 Ch. 230), and *In re State of Wyoming Syndicate* (1901, 2 Ch. 431). In the two latter cases the secretary convened the meeting in question without any authority from a board meeting of directors or persons acting as such. The second ground on which the plaintiffs have objected to the validity of the

third and fourth resolutions passed at this meeting is that they could only have been properly passed after the articles had been altered by special resolution. The company in general meeting could not appoint, and could not ratify, as from December 1901, the appointment of Fuke as managing director at £700 per annum as he had not the necessary qualification, and the maximum remuneration of the whole board was fixed by the articles at £500. The articles, until altered, bound the shareholders in general meeting as much as the board. The present case is unlike that of *Irvine v. Union Bank of Australia* (2 App. Cas. 366), to which reference was made, as in that case the limitation of the power of borrowing and mortgaging was merely a limitation of the authority of the directors, and not a limitation of the general powers of the company. It was argued (see p. 374) that the acts of the directors in excess of their authority might be ratified by the company and rendered binding, and that contention succeeded. Articles must first be altered by special resolution before the altered articles can be acted upon—*Imperial Hydropathic Hotel Company, Blackpool v. Hampson* (23 Ch.D. 1). It was urged that there was power under article 77, if in the opinion of the board it was desirable that any of their number should perform any special services, to pay him additional remuneration, but there was no duly constituted board to form any such opinion, and that is a condition precedent (see *Caridad Copper Mining Company v. Swallow*, 1902, 2 K.B. 44); moreover, no special services are referred to either in the board minutes or the minutes of the general meeting, and the company did not purport to exercise this power in any way. It was further urged on behalf of Mr. Rigby that he ought not to be under any liability in this matter as he was acting in good faith under the advice of counsel, and without objection the opinion was put in evidence, but when looked at it is clear that counsel advised that all the resolutions should be passed as special resolutions, and not merely the first and second; and, moreover, the payment really impeached in this action was made long afterwards, during the present year, and after the question as to it had been raised. The next confirmation relied upon was in January 1905. I pass by the general meeting of August 10 1903, which was not put forward as a ratification, and obviously could not amount to one, no separate amount being mentioned in the accounts for directors' fees, or managing director's fee, only one sum being mentioned as "two years' expenditure to date." The defendants did, however, rely strongly upon what had taken place in January 1905 as a ratification, and an authority to make the payments now questioned, and it is necessary to examine into what then took place. Fuke tried in various directions to raise money for the plaintiff company, but without avail. He stated in his evidence in chief that on November 27 or 29 1904 he saw

Mr. Mayo, the solicitor, who told him that the proposal for raising funds which had been last under consideration was then off, and that Mr. Mayo could hold out no hope whatever; and, in cross-examination, he said that up to the end of November 1904 his negotiations to obtain working capital had resulted in nothing. Mr. Mayo's evidence was to the same effect—that at the end of November he explained that the scheme contained in the exhibit C.R.M.I. was not practicable. On December 1 1904 the first suggestion appears of a new scheme, which was ultimately carried through. Mr. Murray was a director of the Mines and Minerals Company, and that company had been approached to see if they would find money for the plaintiff company in some shape or form. They did not entertain the matter, but on December 1 1904 Mr. Murray called at Fuke's office and asked if he would sell the assets of the Heidelberg Company, which consisted of shares in and debentures of the plaintiff company, to a new syndicate, which would then advance the plaintiff company money to satisfy its liabilities. Fuke and Murray then went on to Mr. Mayo's office to consult him about the matter. Fuke stated that the liabilities of the plaintiff company exceeded £2,000, but could be settled for that sum. That much is not in dispute, but from this point there is a great conflict of evidence as to what occurred. Mr. Mayo says that Fuke completely deceived him; that Fuke led him to suppose that he was greatly out of pocket for advances to the plaintiff company, and that he was never more surprised than when he discovered it was not so, which discovery he made on February 7 1905. That Fuke told him that the liabilities were made up of advances to the company, and in protecting the company's property, and carrying on the company, and directors' fees; that Fuke emphasised advances, and thus led him to believe that the bulk of the debt was due to Fuke for advances, without in terms saying so. Mr. Mayo further stated that he knew nothing whatever of the resolution appointing Fuke managing director at £700 a year, and that he was wholly unaware that the greater part of what Fuke was putting forward as the indebtedness of the plaintiff company which was to be discharged by the New Heidelberg Syndicate consisted of upwards of three years' arrears at £500 a year, part of the £700 a year salary to Fuke as managing director of the company. On the other hand, Fuke deposed in cross-examination that before December 1 1904 he had stated to four persons, including Murray and Mayo, that the larger portion of the indebtedness of the plaintiff company was due to himself for fees. Two of these persons were not called as witnesses, but the other two, Mr. Murray and Mr. Mayo, entirely denied Fuke's statement. Mr. Murray, when pressed in cross-examination, was positive that Fuke did not say that a great part of the amount was due to him for directors' fees.

That what Fuke did say was, that the amount of the plaintiff company's indebtedness was made up of advances, directors' fees, and carrying on the company for two or three years. The fact was that of £1,998 10s. 5d. alleged to be due to Fuke, only £86 was for money advanced to the company, and the whole of the rest was the unpaid balance of £700 a year. I am quite satisfied that Fuke did not disclose this either to Mr. Murray or Mr. Mayo, that Fuke wrapped up the transaction by referring at the same time to his "advances," and to "carrying on the company for two or three years," and, indeed, when he was asked to give particulars of the liabilities of the company, he forwarded a copy of the letter from Mr. Joy to himself giving particulars, amounting to a total of £2,416 19s. 11d., but as regards his own debt, it is merely entered in the list as F. G. Fuke, £2,046 7s., and no particulars are given showing how it is made up. There is apparently some discrepancy between the sum of £2,046 7s., the amount of Fuke's debt entered in this list, and £1,998 10s. 5d., the amount entered in the company's Ledger, and this discrepancy was not explained at the trial. There is no difficulty, however, in ascertaining how the £1,998 10s. 5d. is made up, as the particulars of this were put in. There are five items—£85 5s. and £75 6s. 5d. are the undrawn balance of £400, being £200 a year (part of the £700), from December 4 1901 to December 4 1903; £1,000 is two years from December 4 1901 to 1903, at £500 a year; £751 17s. is the allowance of £700 a year from December 4 1903 to December 31 1904; and £86 is the money advanced. The importance of thus dissecting the items becomes apparent when it is borne in mind that Fuke had no justification whatever for including this £751 17s. as part of the indebtedness of the company. Even if the resolution of May 25 1903 had been a sufficient ratification in every respect, that would only have secured to him £700 a year for two years at most. As from December 4 1903 there was no resolution of any general meeting or of any board meeting continuing him as managing director at £700 a year, and, in my opinion, the entry by him of this sum in his own favour as part of the indebtedness of the company cannot be justified in any way. I accept the evidence of Mr. Mayo and Mr. Murray, and I disbelieve that of Mr. Fuke. In my opinion, Mr. Fuke did mislead Mr. Mayo, and he purposely omitted to disclose that only £86 was for advances, and concealed that the rest of his claim was for managing director's fees of £700 a year; he entered the amount at one lump sum, and laid stress on his advances, in order that the fact that the bulk of his claim was for fees as managing director might escape notice. I also accept Mr. Mayo's evidence as to the date when he first saw the resolution of December 4 1901. On February 7 1905 Mr. Fuke told Mr. Mayo that he was managing director with £700 a year remuneration and that the £1,998 10s. 5d. included the amount undrawn. Mr. Mayo at once complained that he had been induced by sup-

pression, and by what he considered misrepresentation, to agree to the arrangement, and he followed this up by the letter to Mr. Woolley, the plaintiff company's then solicitor, of February 13 1905. Mr. Fuke, in cross-examination, agreed that on February 7 1905 Mr. Mayo's attitude was inconsistent with Mr. Fuke having previously given the information as to his claim for director's fees, and I am quite convinced that Mr. Fuke succeeded in deceiving Mr. Mayo as to the nature of his alleged debt. Although this is an important point, it does not entirely dispose of the matter. Mr. Fuke relies upon the plaintiff company having in general meeting assented to the payment to him of £1,998 10s. 5d., or rather of the balance of the £2,000 found by the New Heidelberg Syndicate, after the other debts of the plaintiff company had been paid. This was the sum of £1,629 18s. 10d., which was paid to Mr. Fuke on March 10 1905, and accepted by him in full discharge of his claim against the company for £1,998 10s. 5d. I have arrived at the conclusion that the nature of the claim put forward by Mr. Fuke, as if it were an admitted indebtedness of the plaintiff company to him, was never fairly and honestly and properly placed before the shareholders of either the plaintiff company or the Heidelberg Company. As regards the latter company, although by reason of their large shareholding in the plaintiff company they could at once have negated any proposal to appoint Mr. Fuke as managing director or to pay him £700, they were never once called together or consulted by Mr. Fuke as to the proposal in which he was so largely interested personally, or as to how the votes which the liquidator of the Heidelberg Company had at his command should be used; and, moreover, when the proposal to sell the assets of the Heidelberg Company to the New Heidelberg Syndicate was brought before the shareholders of the former company for their approval, although it was an integral part of the scheme that the new syndicate should advance £2,000 to pay off the alleged indebtedness of the plaintiff company, Mr. Fuke did not disclose his personal interest in the matter to those shareholders; indeed, he admitted that he never stated at any meeting of the Heidelberg shareholders that he had any interest in the £2,000, whereas the greater part of it was to find its way into his pocket for fees. With regard to the meeting of the plaintiff company on January 28 1905, on which reliance is placed, no sufficient notice was given to the shareholders of what it was proposed to do. The item of Mr. Fuke's claim is concealed by being included in the aggregate of this and other sums; no mention of the fact is made that the condition on which the £500 a year was to be drawn had not happened—viz., the £60,000 capital of the plaintiff company or some part of it being subscribed; nor is any mention made that as regards £751 17s. it has never been voted or fixed either by the company or by the board, and was for a period beyond the two years; although inserted in the accounts, the claim had never been brought before a board meeting of the plaintiff company; and, moreover, the Balance Sheet and accounts were not circulated among the shareholders with the notice convening the meeting. This notice is dated January 19, and the meeting is convened for

January 28, whereas it appears from the board minutes of January 24 1905 that the directors' report was not approved until that day. The first document of any kind in which I can find any mention of Mr. Fuke's claim to £700 a year from December 4 1901 to December 31 1904 is the letter of the auditors of January 18 1905, and they had then discovered that Mr. Fuke had entered a claim for this amount. The auditors made a report to the shareholders on January 24, and this mentions Mr. Fuke's claim, and the Minute Book states that this report was read at the general meeting of January 28. There is no list of shareholders attending this meeting. At the previous meeting on January 12 three shareholders were present and signed the attendance sheet; but there is no list of persons present on January 28, as in the other cases. The Minute Book records that a quorum was present, this was three shareholders, but it transpired on the cross-examination of Albert E. Straker that he was one of the persons present, and was not a shareholder at all, the transfer of his shares having been lodged with the company on July 27 1903, and the shares were not retransferred to him until September 7 1905. In my opinion, no proper or sufficient information was given to the shareholders, and there was no sufficient ratification with knowledge of the facts. My view is the same as to the meeting on February 25 1905, when it was resolved to issue the debentures. I am satisfied that the plaintiff company never ratified—with knowledge of the facts—the payment of £1,912 10s. 5d. to Fuke in respect of fees as managing director, nor did Fuke ever properly and sufficiently explain the position to the shareholders. He treated his most doubtful claim as if it were an admitted debt, to which no exception could be taken, and then referred to the fact that debentures were necessary to cover the £2,000 liabilities of the company. The result is that out of the £1,629 18s. 10d. received by him, by means of the cheque signed by the defendant Rigby, only £86 was properly payable to him, and the balance of £1,543 18s. 10d. must be refunded. I regard this case as one in which Fuke has abused the fiduciary position in which he was, as liquidator of the Heidelberg Company, to secure for himself a large pecuniary benefit, by means of the large number of shares in the plaintiff company held by the Heidelberg Company, and without the knowledge of the Heidelberg shareholders, and without the full knowledge and assent of the shareholders of the plaintiff company. The payment of £1,543 18s. 10d. was a misapplication of the funds of the company for which the defendants Fuke and Rigby are jointly and severally liable. The remaining claim is as to Rigby's remuneration. It is alleged that he only served as director one complete year, for which he was only entitled to £100, but nevertheless has been paid £10 and £180 10s. 8d., making together £190 10s. 8d. The argument that Rigby had not served two complete years was based on the contention that his election or appointment by Fuke on February 3 1903 had not been duly ratified or confirmed by the company in general meeting on August 10 1903, because sufficient notice had not been given that the matter would be dealt with at that meeting. The report of the directors

is dated July 31 1903, and was sent out with the notice convening the ordinary general meeting for August 10 1903. The report contains this paragraph:—"Directors,—  
"You will be asked to ratify the election of Mr. C. O. Rigby, as a director; also to elect a new director," and the notice convening the meeting states that the meeting will be held for the purpose of receiving the directors' report, and accounts, to June 30 1903, and the election of directors and auditors. In my opinion this was sufficient notice to the shareholders of the intention to bring before the meeting the ratification of Mr. Rigby's election. See *Irvine v. Union Bank of Australia* (2 App. Cas. 366), where Sir Barnes Peacock, in delivering the judgment of the Court (at p. 375) said that their Lordships "are not prepared to say that if a report had been circulated before a half-yearly meeting distinctly giving notice that the directors had done an act in excess of their authority, and that the meeting would be asked by confirming the report to ratify the act, this might not be sufficient notice to bring the ratification within the competency of the majority of the shareholders present at the half-yearly meeting." In my opinion this report and notice given amounted to sufficient notice of the business which was intended to be brought forward at the meeting—namely, to ratify the election of Mr. Rigby. The result, therefore, is that this claim fails. The defendants must pay the costs of the action except so far as increased by the claim for alleged excess of remuneration paid to Rigby; the plaintiffs must pay the costs of the action so far as increased by this claim, with the usual set-off.

(22 *Times Law Reports*, 196.)

## Miscellaneous.

### KING'S BENCH DIVISION.

December 5.

(Before CHANNELL, J.)

#### Samuel v. Bell.

*Moneylenders Act, 1900—Reopening Transaction—"Excessive" Interest—"Harsh and Unconscionable" Transaction—Free and Voluntary Agreement—63 & 64 Vict. c. 51, s. 1, subsec. 1.*

This was an action brought by Mr. Charles Samuel, a moneylender (trading as B. S. Thomas), against the defendant to recover £225, the balance claimed to be due upon a promissory note made by the defendant for £300, dated May 19 1905, and payable by twelve monthly instalments of £25 each, commencing July 8 1905. The said note provided that on default in any payment the whole amount remaining unpaid should become due and payable forthwith, and default was made in payment of the fourth instalment. The plaintiff gave credit for three instalments of £25 each respectively, paid on July 17, August 21, and September 18 last. The defendant claimed relief under the Moneylenders Act, 1900.

It appeared that in 1904 the defendant applied to the plaintiff for a loan and the plaintiff offered to lend the defendant £200 upon terms which the defendant declined,

upon the ground that they were too high. Thereupon the plaintiff sent the money to the defendant in bank notes, saying, in effect (as the learned Judge found), that the defendant had better have it and that he (the plaintiff) could not alter his terms. The defendant, being in the position that he did not know where to find the wages for his workmen for the next week, accepted the money. Subsequently a further advance of £100 was arranged, the defendant giving a promissory note for £300. Certain instalments were repaid on this promissory note and then the defendant fell into arrear with one instalment. He was told that he would be sued if he did not send it by 12 o'clock on Saturday, May 6. He did not do that, but sent it on the following Monday. The plaintiff nevertheless issued a writ for the whole balance due. The defendant succeeded in raising the amount and paid it to the plaintiff, together with the costs of the writ. No judgment was signed against the defendant. So far the matter would have been at an end, but a few days afterwards a representative of the plaintiff called upon the defendant and said that he was sure there must have been some mistake, as the plaintiff would not personally have been so harsh and unconscionable. The plaintiff's representative at the same time lent the defendant £200, the defendant giving the promissory note for £300, which was now sued upon.

## JUDGMENT.

Mr. Justice Channell, in giving judgment, said that he felt no difficulty in the special circumstances of this case in saying that relief could be granted. He had fully laid down the principles upon which relief could be granted in *Carrington's, Lim. v. Smith* (Times L.R. 109). This was not a case in which there was a free, open, and independent agreement to pay. The position in which the defendant was at the time the first loan was made, of not knowing where to find the money to pay his men, was a terrible one, and being in that position when he took the bank-notes sent by the plaintiff, his agreement to repay was not made in such circumstances as to be a guide to him (the learned Judge) as to what was a reasonable rate of interest to be charged. With regard to the further loan, the transaction was a very unconscionable one on the part of the plaintiff, and the Moneylenders Act, 1900, could have been set up if the first action had been fought instead of the money's having been paid under the pressure of the writ. By agreement of the parties the present action was to be dealt with on the basis that there was a claim by the defendant to reopen the whole of the former transaction as well as that which culminated in the giving of the promissory note upon which the present action was brought. The question arose whether the former transaction could be reopened, there having been a payment made under the pressure of a writ. In his opinion it could. A further question was whether a matter could be reopened by way of counter-claim in the present action when there would have been a defence under the Moneylenders Act to the first action. In his opinion, in the present case the matters were really all connected from first to last, and ought to be treated from beginning to end as if one

amount had been lent; and the transaction in them would be reopened upon that ground. He did not think that it was necessary for the defendant to have issued a writ claiming relief against the former transaction; in his opinion the relief could be granted in the counter-claim in the present action.

(22 Times Law Reports, 118.)

## WANDSWORTH COUNTY COURT.

January 16.

(Before His Honour Judge RUSSELL.)

**Miller v. Appleton.**

*Speculative Action—Liability of Solicitor for Expenses of Witnesses.*

In this action Dr. E. A. Miller sought to recover against Mr. Charles Frederick Appleton, solicitor, the sum of six guineas for three days' attendance in the High Court for the purpose of giving evidence in the case of *Wright v. The Metropolitan Asylums Board*.

## JUDGMENT.

In giving judgment, his Honour Judge Russell said it was what was known as a speculative action—that was to say, the solicitor undertook to run it for the plaintiff. The point he had to consider was whether Mr. Appleton agreed to run the action free of cost and recoup himself out of any damages that might be recovered; and, if so, whether he was liable to pay witnesses subpoenaed to give evidence. The facts were not in dispute, and Mr. Appleton admitted that that was the agreement made with Wright, the plaintiff. The only dispute between the solicitor and Dr. Miller was that Mr. Appleton said he paid two guineas to the doctor as expenses, but the doctor denied this, asserting that the two guineas were for a report which he supplied. He (the Judge) was of the opinion that Dr. Miller's statement in this respect was correct, and the only matter he had now to decide was whether the solicitor was liable to bear the cost of the doctor's attendance at the trial. Mr. Appleton contended that the doctor could not recover, because he should have claimed his expenses before giving evidence. It seemed to him from the principles concisely laid down in *Chitty on Contracts*, 12th edition, that it was perfectly clear that a witness could recover his expenses from any person who had subpoenaed him, even although he did not ask for them at the time. Mr. Appleton's interest in the matter was far greater than Wright's (the plaintiff in the action in the High Court); therefore Dr. Miller was subpoenaed more by Mr. Appleton than by Wright. Dr. Miller was a professional and skilled witness, called to give evidence on matters peculiarly within his own knowledge, and it seemed to him (the Judge) that such a witness was entitled, not only to his expenses, but also to a fee for loss of time. He therefore gave judgment for the plaintiff for six guineas and costs.

Mr. Appleton, in view of the importance of the case, asked for leave to appeal, but the Judge refused the application.

(S.J.)

**Law Reports.****Accountancy and Auditing.****CHANCERY DIVISION.**

January 27.

(Before FARWELL, J.)

**Macalister v. Blalberg.***Accountant's Charges — Commission on Sale — Terms of Contract.*

The plaintiff was an accountant, and sued the defendant, who was the owner of premises known as the Grand Theatre at Croydon, for the sum of £1,000, which the plaintiff alleged was the commission the defendant verbally agreed on August 4 1904 to pay him if and when he should find a purchaser for the theatre on the following terms:—(a) The plaintiff to find a purchaser for the theatre within twelve months from the said date; (b) the purchaser to pay a deposit of £4,000; (c) the purchaser to agree to purchase at the same price and on the same terms as those contained in a written contract dated June 1 1904 entered into between the defendant and the Industrial Share Corporation, Lim., for the sale of this theatre, which had proved abortive. The plaintiff further alleged that by January 18 1905 he found a purchaser—i.e., the Empire Contract Company, Lim.—who was ready and willing to buy the said theatre on the terms of the contract of June 1 1904, and to pay the deposit of £4,000, but the defendant refused to sell on the terms of the said contract, and repudiated the agreement of August 4 1904. It appeared that early in 1904 the defendant instructed a Mr. Carpenter, an estate agent at Croydon, to find him a purchaser for the theatre on certain terms. Mr. Carpenter communicated with a Mr. Ford, who placed the matter before the plaintiff, who was a director of and largely interested in a financial concern called "The Industrial Share Corporation, Lim.," and on June 1 1904 the written contract between the defendant and the corporation was entered into. By this contract the purchase-price was fixed at £46,000, of which £30,000 was to remain on mortgage at 4½ per cent. interest, and the balance of £16,000 was to be paid in cash. The contract also provided that a deposit of £2,000 was to be paid, which was to be forfeited if the contract was not completed by a given date, and it was also a term of the contract that £5,000 of the £30,000 mortgage was to be paid off by instalments extending over five years. In July 1904 this contract was rescinded by arrangement, and the defendant retained £1,500 of the deposit and returned £500, the balance of it, to the plaintiff. About October 1904 Mr. Ford and the plaintiff got into communication with Messrs. Steadman, Van Praag & Co., the solicitors of the Empire Contract

Company, Lim., which was a solid concern. The plaintiff supplied Messrs. Steadman, Van Praag & Co. with a copy of the contract of June 1 1904, and negotiations ensued between them, acting for their clients, and Mr. Ford, acting for the plaintiff, for the sale to the company of the Croydon Theatre; and in January 1905 the company were ready and willing to buy the theatre on the lines of the contract of June 1 1904, and prepared to pay a deposit of £4,000. In the meantime, in November 1904, the plaintiff wrote the defendant that he believed he had found a purchaser for the theatre; and correspondence ensued between them during the following December, January, and February, the plaintiff in effect asserting that the defendant was bound by the terms of the commission agreement of August 4 and the defendant repudiating any such agreement but stating his willingness to sell for £50,000 if all other terms could be arranged. Consequently the proposed purchase by the Empire Contract Company, Lim., was dropped. The plaintiff then brought this action, and, in giving his evidence, stated that the interview of August 4 took place primarily with reference to a Mr. Catton, with whom he was then negotiating and whom he believed was prepared to buy the theatre, but that at the same time the defendant promised him the commission of £1,000 if he could find a purchaser in twelve months on the terms alleged. A Mr. Bonnard, who was present at this interview, corroborated the plaintiff. The defendant asserted that the interview of August 4 related solely to a proposed sale to Mr. Catton (which went off in a few days), and that he only promised the plaintiff £1,000 if Mr. Catton paid a deposit of £4,600, and he denied that he made any other agreement with the plaintiff.

**JUDGMENT.**

Mr. Justice Farwell, in delivering judgment, said: This is a question of fact, and depends entirely on the credibility of the witnesses. On the whole I believe the testimony of the defendant, and it is more in accordance with the correspondence that has been read. The action will be dismissed, with costs.

(Times.)

**Administrations.****CHANCERY DIVISION.**

January 19.

(Before KEEWICH, J.)

**In re Kenward; Hammond v. Eade.**

*Practice—Administration Action—Insolvent Estate—Transfer of Proceedings to Bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125.*

Motion to transfer administration proceedings from the Chancery Division to Bankruptcy.



The deceased debtor, who was a miller at Uckfield in Sussex, died in April 1905. In December 1905 a creditor took out an administration summons in the Chancery Division to which the executors, who were also creditors, were defendants. Nothing had been done in the Chancery proceedings beyond entering appearance when this motion was made for a transfer to Lewes County Court pursuant to section 125 of the Bankruptcy Act, 1883. The estate was insolvent. Most of the creditors resided in the neighbourhood of Lewes.

## JUDGMENT.

Kekewich, J., in acceding to the application, said that where questions of difficulty arose which had to be adjourned to the Judge, he thought it better to retain the proceedings in his own Court, but that was not the case here, and there was at least equal convenience in transferring the case to the County Court. The scheme of the Bankruptcy Act, 1883, s. 125, was to make the administration of the estate of a deceased insolvent equivalent, as far as possible, to the administration of the estate of a living bankrupt, and unless there was some reason against the transfer the transfer ought to be made.

(L.J. 67.)

## CHANCERY DIVISION.

January 31.

(Before KEKEWICH, J.)

**Re Sampson (deceased); Sampson v. Sampson.**

*Trustee—Appointment of New Trustees—Donee of Power Appointing Himself—Appointment held Invalid—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10, subsec. 1.*

By his will Joseph Sampson gave all his estates to trustees for his wife for life, and after her death to be equally divided among all his children living at his decease for their lives, and upon the death of the survivor of them he directed that his residuary estate should be disposed of and converted into money and such produce thereof should be equally divided amongst all the children of his sons and daughters, but so that the child or children of any one of his sons or daughters should only take his or their parents' share, and he appointed his wife and three sons to be the executors of his will. J. W. Sampson, the surviving son and trustee, died on the 10th of March 1905, and as the executors appointed by his will renounced probate, his eldest son, E. J. Sampson, took out letters of administration with the will annexed and as such administrator appointed himself and his brother, A. E. Sampson, trustees of the will of the testator, Joseph Sampson. They took out the present summons, and one of the questions asked by this summons was whether the applicants had been duly appointed trustees of the testator's will, and if necessary that their appointment might be confirmed by the Court. The appointment was made under the powers conferred by section 10 (1) of the Trustee Act, 1893, which

provides that "where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers conferred on him, or refuses or is unfit to act therein, or is incapable to act therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able or willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee may by writing appoint another person or other persons to be a trustee or trustees in place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit or being incapable as aforesaid." For the applicants it was argued that the appointment was a good appointment. In *Montefiore v. Guedalla* (1903, 2 Ch. 723) Buckley, J., held that there was no rule that a donee of a power to appoint new trustees was unable to appoint himself. The words "another person or other persons" in section 10 must be held to refer not to the appointor but to the person in whose place a new trustee was appointed.

## JUDGMENT.

Kekewich, J., said that in the present case the donee of a power had appointed himself to be a trustee, and the question was whether that was a good appointment, there being no express power under the will to appoint. In *Re Newen* (1894, 2 Ch. 297) he had expressed a decided opinion that a donee of a power could not make such an appointment on the ground that the power was to appoint "any other proper person or persons," and that a man could not be another person than himself. In *Montefiore v. Guedalla* (1903, 2 Ch. 723) Buckley, J., held that the last survivor being the sole trustee (and it followed that the personal representative of the last sole trustee) could appoint new trustees, as there was nothing in the power in that case to prevent it. But he distinguished the case where the power was to appoint some "other" person, and said that in such a case the donee of the power might not be amongst the persons capable of being appointed. The first step was to look at the language of the power. In the present case the power was contained in section 10 of the Trustee Act, 1893. What did "another person" mean? Did it mean some other person than the trustee who was dead or who had become incapable of acting, or did it mean some other person than the person exercising the power? The person who appointed was to appoint another person or other persons to be trustees; surely that must mean some other person than the person appointing. If there was no such person then the surviving or continuing trustee was to appoint. It would be strange if the surviving or continuing trustee could appoint himself. In any of

those cases the surviving or continuing trustee could not appoint himself because he was already a trustee. Therefore it was clear that the words meant some person other than the surviving or continuing trustee, and therefore it must mean some other person than the personal representative of the last surviving or continuing trustee. The present case fell within the exception referred to by Buckley, J., and the appointment must be held to be bad.

(50 S.J. 239.)

## Bankruptcies and Insolvencies.

### KING'S BENCH DIVISION.

February 5.

(Before BIGHAM and DARLING, JJ.)

*Re A. J. Harris; ex parte The Trustee.*

*Bankruptcy—Transfer of Bankrupt's Business to Limited Company—"Fraudulent Conveyance"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, subsec. 1 (b)*

Appeal from a decision of his Honour Judge Bompas, K.C., in the County Court at Bradford. The bankrupt had carried on business as an electrical engineer and dealer in fittings since 1892. In August 1903, he borrowed from William Mitchell, the petitioning creditor, £500 at 5 per cent. interest without any security but a promissory note payable on demand. At the same time Mitchell's son, Joseph William Mitchell, became apprentice to the bankrupt for three years, with the option of becoming a partner and putting capital into the business at the expiration of his apprenticeship. In April 1905 the bankrupt got into arrears with the interest on the loan from Mitchell, asked him to let the interest stand over for a time, and suggested that J. W. Mitchell should at once enter into partnership with him and bring in fresh capital. Mitchell refused to consent. On the 16th of May the bankrupt again wrote asking Mitchell to let his son come into partnership and put £200 into the business, but Mitchell again refused, and advised the bankrupt to try to get an overdraft from his bank, which he could not succeed in getting. On the 27th of May the bankrupt's solicitors wrote to J. W. Mitchell that creditors were pressing, and made suggestions as to terminating the apprenticeship, but the parties came to no agreement in the matter. About the end of June the elder Mitchell heard a rumour that the bankrupt was going to turn his business into a company and had an interview with him on the subject, when the bankrupt stated that he had practically given up the idea and promised not to deal with his assets without Mitchell's consent. On the 3rd of July the bankrupt registered the company of A. J. Harris & Co., Lim., with a capital of £2,000 in £1 shares, and on the 7th of July executed a transfer of all his assets to the company for £1,094-£94

in shares, £750 in debentures, and £250 in cash. The company also undertook to pay the bankrupt's existing debts, estimated at about £1,000. The assets were estimated at £2,000, made up of stock £1,170, plant £662, book debts £268. No shares were issued to the public. On the 19th of July a board meeting was held, when it was resolved to give the bankrupt £250 in debentures instead of paying that sum in cash as agreed. The bankrupt said that he wanted the debentures because they were a good investment, but he was then in such straits for cash that next day he borrowed £20 on a bill of sale. On the 28th of July Mitchell got judgment against the bankrupt for his debt and interest, presented a petition on the 8th of August, and obtained a receiving order on the 18th of August. A trustee was appointed who moved to set aside the transfer to the company as a fraudulent conveyance. Prior to serving notice of motion the trustee held a private examination of the bankrupt, who stated that he had been pressed by his creditors, and as he could not get J. W. Mitchell or another man whom he approached to come in as partners, and, as the bank refused him an overdraft, he thought he could raise capital by forming a company, and that he would be able to borrow on the debentures to pay Mitchell. The bank, however, refused any loan on the debentures. The County Court Judge dismissed the motion and the trustee appealed. It was contended for the appellant that the necessary effect of the bankrupt's transfer to the company was to delay his creditors, as they could only take his debentures in lieu of free assets, and the debentures could not be enforced without delay, and only in certain events.

### JUDGMENT.

Bigham, J., held that the bankrupt had had no intent to delay or defeat his creditors and had not in fact delayed them, but had only changed the character of his assets from stock-in-trade to debentures, which he was both morally and legally entitled to do.

Darling, J., concurred, with some doubt.

The Court dismissed the appeal. Leave to appeal was given.

(50 S.J. 241.)

## Company Law.

### CHANCERY DIVISION.

January 29.

(Before JOYCE, J.)

*Re Henry Castle & Sons, Lim. (In Liquidation), and in the Matter of Henry Castle & Sons, Lim.; Mitchell v. Henry Castle & Sons, Lim., and others.*

*Lease—Forfeiture on Liquidation—Relief Against—Sale within Year—What Amounts to—Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13), s. 2, subsec. 2.*

This was a motion by mortgagees in possession for the delivery up to them of the properties demised by two

indentures of lease or for leave, notwithstanding the appointment of a receiver, to enter upon the said properties for breach of a condition of forfeiture on bankruptcy, which includes liquidation by arrangement under section 2, subsection 15, of the Conveyancing and Law of Property Act, 1881. On the 28th of October 1904 a receiver and manager had been appointed on behalf of the holders of debenture-stock of the company, which company were the lessees of the properties by the said indentures demised, and on the 14th of December the company passed a special resolution and entered into voluntary liquidation. The receiver, with a view to obtaining relief against forfeiture incurred by breach of covenants in the said leases contained sought to enter into two agreements for sale of the said properties dated the 8th and the 13th of December 1905 respectively within one year from the date of the liquidation under section 2, subsection 2, of the Conveyancing and Law of Property Act, 1892, such agreements being conditional on the sanction of the Court being obtained to the same. Such sanction had not been obtained.

#### JUDGMENT.

Joyce, J., in giving judgment, said there was no sale within the meaning of section 2, subsection 2, of the Conveyancing and Law of Property Act, 1892, unless such sale be completed by conveyance or, at any rate, there be an absolute contract for an out-and-out sale within one year from the date of the liquidation. He therefore held that there was no such sale.

(50 S.J. 240.)

### Receiverships.

#### CHANCERY DIVISION.

January 30.

(Before SWINFEN-EADY, J.)

*In re The Crigglestone Coal Company, Lim.;*  
**Stewart v. The Crigglestone Coal Company, Lim.**

*Practice—First Debenture-holders' Action—Third Debenture-holders not all Parties—Agreed Minutes—Immediate Sale.*

This was a first debenture-holders' action by Henry Chalker, suing on behalf of himself and all other the holders of a series of first debentures amounting to the total value of £25,000, and by the trustees of the trust deed, dated July 25 1895, intended to secure those debentures. The defendant company had also issued a series of second debentures amounting in total value to £20,000, all of which were held by the second defendant, Christopher Arthur Moulton; and likewise a series of third debentures amounting in total value to £40,000, 190 of which, out of a total of 400, were held by the third defendant, Edward Allen

Brotherton, and thirty of which were held by the plaintiff Chalker. The holders of the remainder of the series of third debentures were not parties to the action.

In recent times the colliery company had been involved in considerable difficulty, owing to the existence of a fault in their workings and the influx of unmanageable quantities of water. In consequence it was resolved at a meeting of the directors held on January 8 1906, that the business of the colliery should forthwith cease, but that the pumping and ventilating machinery should be maintained, and that other preparations should be made with a view to the realisation of the collieries. There was reason to believe that the collieries might still in the future be worked with profit by a company with large capital.

The writ was issued in the present action, and a receiver and manager were appointed of the property of the company on the following day—*i.e.*, January 9 1906.

The principal moneys secured by the first debentures were not due till January 1 1910, and the interest payable on them was not in arrear.

The defendant company and the two other defendants, by their respective statements of defence, dated January 18 1906, admitted all the allegations in the plaintiffs' statement of claim.

The plaintiffs accordingly now moved for judgment in the terms of certain minutes annexed. One of these minutes provided for an order that the receiver should be at liberty to sell, by public auction or private contract, all the property, assets, and effects of the defendant company as a going concern.

Hon. E. C. Macnaghten, K.C., and H. M. Humphry, for the plaintiffs, submitted that, since the security comprised in the debentures was in jeopardy, the Court was justified in ordering an immediate sale under Order LI., rule 1b. This had been done even in a case like the present, in which the principal moneys secured by the debentures were not yet due, and in which the interest was not in arrear (*In re The Day and Night Advertising Company; Upward v. The Day and Night Advertising Company*, 1900, 48 W.R. 362).

#### JUDGMENT.

Swinfen-Eady, J., said that he felt some difficulty in making the order asked for in the present form, since some of the third debenture-holders were not before the Court. The difficulty, however, would be met by varying the proposed minute ordering the receiver to sell, and, instead thereof, directing that a sale should take place with the approbation of the Judge. This would enable the absent third debenture-holders to come in when the contract for sale should come before the Court for approval.

(L.J. 87.)

## Law Reports.

### Accountancy and Auditing.

#### CHANCERY DIVISION.

February 16.

(Before A. T. LAWRENCE, J., and a Special Jury.)

#### Murray v. Bushell.

*Accountant's Charges—Claim for Services rendered—Disputed Employment—Finding of Jury.*

This action was for work done as financial agent, and there was a counter-claim for alleged libel.

Mr. Chambers said the plaintiff (Mr. Joseph Thomson Murray) was a Chartered Accountant, of Stanhope Terrace, Hyde Park. He had been in business for many years, and had also acted as financial agent. The defendant (Mr. Benjamin Collard Bushell), of Felcourt, East Grinstead, was in 1904 the owner of some 4,500 shares of £10 each in a brewery at Westerham, Kent, called Bushell, Watkins & Smith, Ltd., of which he had been chairman and managing director. In April of that year he was desirous of raising some £22,000 to £25,000 on the shares, by way of loan, or selling them. Plaintiff was introduced to him at the Gresham Club, in the City, and arranged, as an accountant and financial agent, to sell the shares, his remuneration whilst acting for the defendant to be that of a Chartered Accountant—namely, five guineas per day of six hours and out-of-pocket expenses. He did the best he could, but the defendant, he said, interfered with his negotiations, and, as a consequence of that interference, he was prevented from carrying out the sale of the shares. Had he sold the shares he would have earned 3 per cent. commission. Besides, he said that the defendant gave him an option on 3,500 of them at £7 15s. each, but sold them himself to Messrs. Barclay, Perkins & Co. for £8 each. Plaintiff said he could have easily done that himself and made a profit of £875. He claimed that amount, or, alternatively, his remuneration as a Chartered Accountant for the time spent—namely, three hundred and eighty-three hours and £20 out-of-pocket expenses. He therefore claimed £335 2s. 6d., or commission.

Mr. Hohler (for the defendant) said the latter denied that plaintiff was employed to do anything but find purchasers for the shares on commission. He was never engaged on any other terms than being paid in the event of his doing business.

Mr. Bushell, the defendant, said he never at the Gresham Club entered into the arrangements described by the plaintiff.

Mr. R. E. Bushell, defendant's nephew, said he was present at the meeting at the Gresham Club. Nothing was said about plaintiff being remunerated for his services in any event.

His Lordship said it was for the jury to decide as to what took place at the Gresham Club, and, as to the counter-claim, the point they had to consider was whether the letter written by the plaintiff to Messrs. Barclay, Perkins & Co. about his alleged lien on the shares was a wrongful misstatement, made knowingly, and calculated to injure the defendant in his financial position.

The jury, without leaving the box, found for defendant on the claim and for defendant, also, on the counter-claim, damages £350.

Stay of execution was granted for fourteen days on the usual terms.

(*Financial News*.)

### Receiverships.

#### COURT OF APPEAL.

February 1.

(Before VAUGHAN WILLIAMS, STIRLING, and MOULTON, L.JJ.)

#### Goldschmidt v. Oberrheinische Metallwerke.

*Practice—Receiver—Equitable Execution—Judgment Debtor a Foreigner Resident Abroad—Debts Due to Judgment Debtor within Jurisdiction—R. S. C. XLV. 1; L. 16; Appendix B, Form 25—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, subsec. 8.*

Appeal from an order of Channell, J., in Chambers. The action was brought for an account of the commission due to the plaintiff as the sole agent of the defendants in Great Britain, and for payment of the amount found due. At the trial of the action judgment was given for the plaintiff for an amount to be ascertained upon an account to be taken by an official referee, and the costs of the action. The Taxing Master, before the account was taken, proceeded to tax the costs of the action, and at the request of the plaintiff's solicitor he gave an interim certificate that he had allowed the sum of £250 on account of the plaintiff's costs. The plaintiff thereupon applied at Chambers for the appointment of a receiver of the debts and sums of money due and owing and thenceforth becoming due and owing to the defendants by persons and firms who were customers of the defendants in this country. The plaintiff made an affidavit in support of the application, in which he stated that the defendants were a limited liability company incorporated and carrying on business in Germany, and had no place of business in this country, and no assets or property which could be taken in execution by a *f. fa.* or any ordinary process of execution; that the only assets which they had in this country were the debts due and owing and which would become due and owing to them by persons and firms to whom they had supplied goods; that an exhibit to the affidavit contained a list of the persons or firms to whom, as he (the plaintiff) was informed and believed, the defendants had supplied

goods; that he was informed by several of the above-mentioned persons that the representatives of the defendant company who attended the trial in London had since the judgment called upon those persons to obtain payment of their accounts, and the plaintiff believed that it was the defendants' intention to collect all the moneys due to them in England, and to change the name of the company, so preventing him from obtaining the fruits of his judgment. Channell, J., refused to appoint a receiver. The plaintiff appealed, and notice of the appeal was served on the defendants, but they did not appear. It was stated on behalf of the plaintiff that, though he knew who were the defendants' customers in this country, he was unable to say whether any debts were due from them to the defendants or the amounts of the debts, if any, which were due.

## JUDGMENT.

The Court allowed the appeal.

Vaughan Williams, L.J., said that there were special circumstances in this case which entitled the plaintiff to this remedy of the appointment of a receiver by way of equitable execution, as it was practically very difficult to get a remedy by the ordinary mode of execution. The case came within the language used by Fry, L.J., in *Manchester and Liverpool District Banking Co. v. Parkinson* (22 Q.B.D. 173, at p. 177), and he was inclined to think that it fell under both the heads stated by Fry, L.J.—namely, where a receiver was required to get in debts, or to prevent someone making away with them, because upon the facts here it seemed likely that the defendant company would withdraw those debts from any chance of execution here unless a receiver were appointed.

Stirling and Moulton, L.JJ., agreed.

(50 S.J. 238.)

## CHANCERY DIVISION.

January 26.

(Before KEKEWICH, J.)

*In re Dawson; Clarke v. Dawson.*

*Receiver—Creditor's Action—Intestacy—No Personal Representatives of Debtor—Real Estate.*

This was a motion on behalf of a creditor of J. E. D., who died intestate in 1895, for the appointment of a receiver of the rents and profits of certain real estate, belonging to the intestate. The personal estate of the intestate was administered by J. D. his eldest son and heir-at-law, and he paid interest to the creditor on his debt of £1,000 down to the date of his (the administrator's) death in 1904. The two defendants to the action were the executor and executrix of J. D., and they were also in possession of the real estate in question as heirs-at-law. In 1905 the plaintiff cited the next-of-kin of J. E. D. to accept or refuse letters of administration of the unadministered personal estate of the intestate, and it then appeared that the personal estate had all been administered. The plaintiff then moved in the Probate Court for a grant to himself of letters of administration; but as he could not prove there was any personal estate, and the intestate had died before the passing of the Land Transfer Act,

1897, the Court declined to issue letters of administration. It being thus impossible to obtain legal personal representatives of the intestate's estate, the plaintiff instituted the action, on behalf of himself and all the other creditors, and desired a receiver in order to obtain the realisation of the real estate in question to satisfy his debt.

The will of J. D. was being contested in the Probate Division between the two defendants.

## JUDGMENT.

Kekewich, J., said that the plaintiff was entitled to a receiver as a matter of right, and he did not think he had any discretion in the matter. The appointment of the receiver asked for was accordingly sanctioned on security being given.

(L.J. 68).

## CHANCERY DIVISION.

February 6.

(Before WARRINGTON, J.)

*In re British Power, Traction, and Lighting Co., Lim.; Halifax Joint Stock Banking Co., Lim. v. The Company.*

*Company—Receiver and Manager—Debenture-holders' Action—Order authorising Manager to Borrow Money—Debts incurred by him beyond Amount—Right to Indemnity out of Assets.*

This case raised an important question of principle (upon which there did not appear to be any decided authorities) as to the right of a manager appointed in an ordinary debenture-holders' action to be indemnified out of the assets of the company in respect of debts and liabilities incurred by him in carrying on the business of the company where an order had been made authorising him to raise money by mortgage of the assets of the company to a certain limited amount. The facts are fully stated in the judgment.

The case was heard on January 24, 25, and 26, and on the conclusion of the arguments his Lordship reserved his judgment.

## JUDGMENT.

Mr. Justice Warrington: The applicants in this case ask for a declaration that the late manager appointed by the Court in the action (an ordinary debenture-holders' action) is not entitled to be indemnified out of the assets of the company in respect of certain debts and liabilities incurred by him in carrying on the business of the company. On the answer to this question it depends whether creditors of the manager in respect of such debts and liabilities are to be paid out of the assets of the company, the manager himself having become bankrupt. The summons asks, in the alternative, that the respective priorities of the debenture-holders and the several classes of creditors may be determined. By an order in the action dated August 27 1902 Herbert Watkins was appointed receiver of the undertaking and property of the defendant company and to manage its business, but he was not to act as such manager after December 30 1902 without the leave of the Judge. By an order of August 28 1902 it was ordered that for the purpose of paying the current week's

wages and the amount due for gas, as mentioned in an affidavit of Mr. Hodgson therein referred to, the manager was to be at liberty to raise on mortgage of the assets of the defendant company a sum not exceeding £750 at interest at a rate not exceeding £5 per cent. per annum, and that such money, when raised, and interest, was to be a first charge upon the assets of the defendant company and all the property and effects included in the debentures. By a further order dated September 4 1902 it was ordered that the manager was to be at liberty to raise on mortgage of the assets of the defendant company such a sum as with the sum of £750 in the order of August 28 1902, referred to, would not exceed £3,000, with interest at a rate not exceeding £5 per cent. per annum, and it was ordered that such money, when raised, and interest, was to be a first charge upon the assets of the defendant company and all property and effects included in the debentures. This order, as well as that of August 28, was made upon the affidavit of Mr. Hodgson; and from that it appears clearly that except the £750 mentioned in the order of August 28, the money was required for the ordinary current expenses of carrying on the business of the company. On September 4 1902 a petition for winding up the company was presented, upon which a winding-up order was made on December 16. Meanwhile judgment was obtained in the action on November 29. On December 15 leave was given to the manager to carry on the business till January 13 1903, and on January 14 1903 further liberty to carry on the business for a period of three months was given. Each of the applications on which leave was so given was supported by an affidavit of the manager. No application was, on either of these occasions, or at any other time, made for leave to borrow any further sum or to incur any further liability. On February 11 1903 an order was made by which, after stating that Herbert Watkins desired to retire from his office of receiver and manager, and he consenting to the order, one George Pepler Norton was appointed receiver and manager, and it was ordered that he should forthwith, out of any assets coming to his hands, other than money borrowed by him for payment of wages as thereafter authorised, pay the debts, if any, of the company which might have priority over the claims of the debenture-holders, and make provision for paying the liabilities properly incurred by the said H. Watkins as receiver and manager. By the same order Watkins undertook within ten days to lodge his first and final account. The order contained other directions not material for the purposes of this judgment. On February 13 1903 Watkins left the country and took with him £465, the moneys of the company, insisting that he was entitled to retain that sum for his indemnity. Watkins did not lodge his account as directed by the order of February 11, and on March 2 1903 the Registrar directed the new receiver to make out such an account of the receipts and payments of Watkins as he could. By an order of March 10 1903 it was ordered that the new receiver and manager should be at liberty to raise on mortgage of the assets of the defendant company such sum or sums, not exceeding in all £1,000, as he might think necessary, with interest as therein mentioned,

and that such moneys when advanced with interest should be a charge on the assets of the defendant company ranking immediately after any moneys, not exceeding in all £3,000, borrowed by the said Herbert Watkins pursuant to the leave given to him by the orders of August 28 1902 and September 4 1902; but, subject to the direction as to the priority of the sum or sums thereby authorised to be borrowed thereinbefore contained, the order was to be without prejudice to any right of Barclay & Co., Lim., to obtain repayment out of the assets of the defendant company in priority to the debenture-holders of any sum in excess of the said sum of £3,000 which they might have lent to the said Herbert Watkins as receiver and manager. Barclay & Co. were the bankers of the former manager, and he had borrowed from them the £3,000 authorised by the order of September 4 by means of an overdraft. He had overdrawn his account to the extent of £1,500 in addition. It is this excess in the overdraft to which the order refers. On May 5 1903 the account of the receipts and payments of Watkins as prepared by Norton under the directions given on March 2 was filed, whereby it appeared that the total overdraft was £4,500, and that there were, in addition, outstanding debts to a considerable amount. Subsequently directions were given for the winding-up of the business and a sale of the assets. These are now represented by a sum of about £8,700 Consols and a sum of about £50 cash in Court. By an order dated July 19 1904 two inquiries were directed—first, what creditors there are in respect of debts and liabilities incurred by Watkins as receiver and manager, and what are the amounts due to such creditors respectively; and, secondly, whether the said Herbert Watkins, as such receiver and manager, is entitled to be indemnified out of the assets of the defendant company in respect of the said debts and liabilities or any of them, and, if so, to what extent. By an order of July 26 1904 it was declared that Barclay & Co. were entitled, in priority to all the holders of debentures issued by the defendant company, to a charge on the assets of the defendant company for £3,000 with interest as therein mentioned, being the amount borrowed in pursuance of the orders of August 28 1902 and September 4 1902; but that order was to be without prejudice to any question as between Barclay & Co. and the creditors in the order mentioned whether the charge thereby declared was in priority to any right of indemnity out of such assets to which the said Herbert Watkins might be found to be entitled, and also to the rights, if any, of his creditors claiming the benefit of any such indemnity, and also without prejudice to the right, if any, of Barclay & Co. to claim the benefit of such indemnity as one of such creditors. Under the inquiry directed by the order of July 19 1904 claims have been carried in for sums amounting to upwards of £6,000 in addition to the authorised sum of £3,000. Watkins has returned to this country and has been adjudicated bankrupt. It has been thought convenient that the Court should settle the principle upon which the alleged right of Watkins to an indemnity and the consequent right of his creditors to be paid out of the assets of the company should be determined before the

Registrar proceeds to consider the details of the several claims. The present summons has accordingly been issued. The law as to the position of a manager appointed by the Court, where no special provision is made for meeting expenses and liabilities incurred by him, is not disputed, and is, indeed, beyond dispute. It is, on the one hand, his duty to carry on the business, and for that purpose to enter into proper contracts on his own responsibility, and it is, on the other hand, his right to be indemnified out of the assets against expenses and liabilities properly incurred in the execution of his duty: *Burt v. Bull* (1895, 1 Q.B. 276), and *Strapp v. Bull* (1895, 2 Ch. 1). Moreover, though I do not find this anywhere expressly laid down, I think that expenses and liabilities *bond fide* incurred in the ordinary course of the business would *prima facie* be treated as having been properly incurred. But is the position of the manager the same in cases where, as here, he is authorised to borrow a sum not exceeding a certain limit for the general purposes of the business he is carrying on? I say advisedly "for the general purposes," for what I am about to say is not intended to apply to cases where the authority to borrow is for some special purpose. The effect of an authority to borrow for general purposes is to provide at the expense of the parties interested in the assets a special fund out of which the manager can indemnify himself, and the amount of that fund is fixed after considering what the parties interested state as to the requirements of the business. What is the result as to the manager's general right to indemnity? That he is not deprived of it altogether follows, in my opinion, from the decisions in *Strapp v. Bull*, above referred to, and *In re Glasdir Copper Mines*. On the other hand, when the Court thus protects the manager by providing a special indemnity, it cannot be that he is nevertheless entitled, without any further authority, to incur expenses and liabilities to an unlimited extent and to require them to be met out of the assets. It seems to me the true position in these cases is that the order is intended to limit his general authority, and if he finds that the fund provided by the Court is not sufficient, it is his duty to cause the matter to be brought before the Court, so that, if it sees fit, it may increase it, or give him leave to incur further expenses or liabilities, which comes to the same thing. If, without such an application being made, he incurs expenses and liabilities exceeding the limit, he is, in my opinion, not entitled to be indemnified against them unless he can show that, having regard to all the circumstances under which they were incurred, he was justified in incurring them without first obtaining leave. If he succeeds in showing this, then I think the expenses and liabilities would be properly incurred, but not otherwise. What circumstances would justify the conduct of the manager in so increasing such expenses and liabilities without leave cannot, I think, be defined in general terms, but must be determined in each particular case. I will only say that, in my opinion, it would not be enough to show that the expenses or liabilities were incurred *bond fide* and in the ordinary course of business. As regards authorities, there is, in my opinion, none which throws any light upon the case. It is true that in *Strapp v. Bull* and *In re Glasdir Copper Mines* managers with special powers to borrow were treated as entitled to

an indemnity for expenses outside the limit; but in neither case was the present question raised; and I cannot but assume that the parties there did not desire to question the propriety of the manager's conduct in incurring such expenses. It was argued that the rights and duties of the manager were fixed once for all by the original order. I cannot take this view. It seems to me that the Court can at any time limit the authority of its own officer. The result is that it is still open to the manager, and through him to the claimants, to show that his liabilities to the latter were properly incurred so as to entitle him to an indemnity and them to payment through him. I was, indeed, asked to say that, under circumstances which were put in evidence, the manager in this particular case was entitled to no indemnity at all. I cannot come to this conclusion; and I think it better not to discuss the evidence, inasmuch as it will have to be gone into on the examination of the several claims before the Registrar, and I am anxious not to prejudice questions the complete materials for deciding which may not be before me. I propose to declare that Herbert Watkins, the late receiver and manager, is entitled to be indemnified against those debts and liabilities only (over and above the permitted overdraft of £3,000) as to which he shall satisfy the Judge that, having regard to all the circumstances under which the same respectively were incurred, he was justified in incurring them without first obtaining the leave of the Judge. That part of the summons which refers to the priorities of the several classes of creditors had better stand over until the Registrar has dealt with the several claims having regard to the above declaration.

His Lordship allowed the costs of all the parties of the present application (other than the bankrupt's trustee) out of the assets.

(22 Times Law Reports, 268.)

#### CITY OF LONDON COURT.

February 15.

(Before His Honour Judge LUMLEY SMITH, K.C.)

#### Coxhead v. Salaman.

Receiver—Partnership Dissolution—Claim for Rent—Personal Liability of Receiver.

*Coxhead v. Salaman* was a claim by Mr. F. J. Coxhead, Bulmer Road, Leytonstone, against Mr. F. S. Salaman, 1 Oxford Court, Cannon Street, as receiver of the partnership of Fairweather & Ridley. There was no question as to the facts, but the Court had to decide whether or not the defendant was personally liable for the debt. Plaintiff was the landlord of premises at 47 Milton Street, and in September 1904 he let them to Fairweather & Ridley at £70 a year. Proceedings were taken for dissolving that partnership, and on March 24 the defendant was appointed as the receiver to collect the assets, &c. He was not, however, the manager. The plaintiff's case was that the defendant personally agreed to pay £17 10s., a quarter's rent, on consideration that the tenancy then terminated. Defendant had handed over the keys, but declined to pay the rent, as, he said, he had no funds and never pledged his personal liability. Mr. Brandon said that the defendant regarded the matter as important, as he was acting in a similar capacity in many other cases. He had never made himself liable.

JUDGMENT.

Judgment was entered for the defendant, with costs.

(City Press.)

## Law Reports.

### Administrations.

#### CHANCERY DIVISION.

February 9.

(Before KEKEWICH, J.)

#### Grove v. Search; Griffin v. Search.

*Trustee—Power of Sale, with Power of Postponement—Sale Impeached by Beneficiaries on ground of Improvidence—Valuation of Property.*

The first of these actions was brought by beneficiaries under the will of Philip Grove, deceased, for a declaration that a contract made on February 9 1905 between the trustees of the will and Mr. Richard Michael Griffin for the sale to the latter of a freehold house known as Quorn House, Leamington, at the price of £3,000 constituted a breach of trust on the part of the trustees, and for an injunction to restrain the parties from carrying the contract into effect. The second action was brought by the purchaser against the trustees of the will for specific performance of the contract.

The testator devised and bequeathed his residuary estate to his trustees upon trust for sale with a power of postponement, and upon trust out of the proceeds to pay his debts and funeral expenses and then to pay an annuity of £500 to his widow and a further yearly sum of £100 for the maintenance and education of each of his children during their minority. The testator died on September 10 1904, leaving his wife and four infant children him surviving, and there appeared to be some doubt whether the income of his residuary estate would be sufficient for the payment in full of the annuity and the four yearly sums of £100. Part of the testator's residuary real estate consisted of the house known as Quorn House, which was subject to a lease to Griffin for the term of 21 years from September 29 1898, determinable at the option of the tenant at the expiration of seven years, at the yearly rent of £225, and was subject also to a mortgage for £3,500. This house was valued for probate at £4,100, the trustees having accepted that valuation from the beneficiaries' solicitor, who had some knowledge of property in the neighbourhood. In December 1904 the trustees were desirous of selling this house in exercise of their trust for sale. Accordingly they put the matter in the hands of Messrs. Debenham, Tewson & Co. and instructed them to send a representative to inspect and report upon the property. On January 4 1905 Mr. Adams, who was manager to Messrs. Debenham & Tewson, but was not a qualified valuer, proceeded to Leamington and viewed the house,

and on his return he informed the trustees that Mr. Griffin was a possible purchaser. The trustees, on the advice of Messrs. Debenham & Tewson, offered to sell the house to Griffin for £4,000, but this offer was refused, and they then offered it for £3,700, being £200 more than the mortgage debt. Griffin refused that offer also, but offered £3,000 for the house. The trustees were not disposed to accept this offer, but they instructed Messrs. Debenham & Tewson to report to them on the matter. They reported that the property had considerably deteriorated in value since the grant of the lease to Griffin and that the advent of electric trams on the road would tend still further to decrease its value, that when the property became unlet there was no probability of the then present rental being sustained, and that it was very doubtful whether another purchaser could be found on any better terms. At this time it had come to the knowledge of the trustees that Griffin was likely to exercise his option to determine the lease. Ultimately, after taking the advice of counsel, the trustees determined to accept the offer of £3,000, and accordingly the contract of February 9 1905 was entered into. The beneficiaries complained that the price was grossly inadequate, it not being sufficient even to cover the mortgage debt, and that the trustees had taken no steps to ascertain what was the best price which could reasonably be obtained, and they also complained that the trustees did not inform them of the existence of the negotiations.

#### JUDGMENT.

Mr. Justice Kekewich said that the question to be decided was stated by Lord Justice Mellish (quoting from Lord Justice Turner) in *Dance v. Goldingham* (L.R. 8 Ch. 902) as follows:—"The true question on which the validity of such a sale must depend seems to me to be this:—"Was or was not the sale made under such circumstances and in such a manner as that the *cestuis que trustent* ought to be held bound by it? If it was, the title of the purchaser could not, I conceive, be impeached. If it was not, his title would, I apprehend, be liable to impeachment at the suit of the *cestuis que trustent*." It was said that this sale ought to be impeached on two grounds—first, undue haste; secondly, improvidence. As to the first ground, it was true that little time had elapsed between the testator's death and the realisation. The trustees thought they ought to sell at once. There was a direct trust for sale, followed, no doubt, by a power of postponement. According to his Lordship's experience in Chambers, when a trust was in this form it was very seldom for the advantage of the trust estate that the sale should be postponed. It was usually better that the sale should take place as soon as was reasonably possible. Looking at all the circumstances of this case, his Lordship came to the conclusion that the trustees were quite right in desiring to realise the testator's



estate as quickly as possible. Quorn House was let at £225 a year, with power to the tenant to break his lease at the end of the first seven years, and it was said that he intended to give that notice. In those circumstances it was impossible for the trustees to sell the house properly except to the tenant himself, since they could not know whether the notice to determine would be given or not, but that consideration did not apply in the least to a sale to the tenant; and his Lordship saw no evidence of any undue haste on the part of the trustees. Then as to improvidence. No doubt the trustees were bound to get the best price they reasonably could for their *cestuis que trustent*. What improvidence was there here? It was said that the trustees had consulted the solicitors of the beneficiaries as to the value of this property for probate, and had accepted the valuation of the solicitors, and that they did not consult them again with reference to the sale; but in his Lordship's opinion there was no obligation on the trustees to communicate with the solicitors of the beneficiaries at all. Then it was said that the trustees never had a valuation of the property made at the time. What they did was to instruct Messrs. Debenham & Tewson, not to sell, but to report with a view to a sale. Adams, no doubt, was not a qualified valuer, but he was thoroughly qualified for the purpose for which he was employed—viz., to inspect and report. When the offer of the £3,000 was made the trustees at first would have nothing to do with it, seeing that the property was mortgaged for £3,500, and was valued for probate at £4,100, and they refused to consider the matter unless they had a report in writing under the signature of the firm. That report was duly written and signed by the firm, and the trustees acted upon it. There was some evidence at the trial that a little more might have been got for the property, but evidence of that kind ought always to be accepted with a large pinch of salt. There was certainly a depression in the market at the time of the sale, and that weighed very much with Debenham & Tewson. His Lordship was not convinced on the evidence that there was any market for a house of this kind at a large price or at any price, and it might have been in the market at the present moment. Suppose the trustees had taken a different course, and had not accepted the offer, and had taken the risk of Griffin keeping on the lease, in his Lordship's opinion they would have acted very culpably. Of course, they might have taken another opinion, but they were advised by a firm of very high reputation, and he did not think it necessary that they should take another opinion. He had no reason to doubt that Messrs. Debenham gave good advice, notwithstanding that the price was £500 less than the mortgage debt, and more than £1,000 less than the probate valuation. The most that could be said against the trustees was that they had committed an error of judgment, but he was

not convinced even of that. Taking the test laid down by Lord Justice Mellish, it would be wrong to impeach this contract. Mr. Griffin was, therefore, entitled to specific performance, and the trustees must be kept harmless at the expense of the trust estate.

(22 *Times Law Reports*, 290.)

#### CHANCERY DIVISION.

February 14.

(Before KEKEWICH, J.)

#### *Re Kempster; Kempster v. Kempster.*

*Administration—Debts, Funeral and Testamentary Expenses—Marshalling Assets—Pecuniary Legatees—Real Estate charged with Debts—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2, subsec. 3.*

Adjourned summons. By his will, dated the 9th of October 1903, the testator appointed his wife, the plaintiff, Deborah Kempster, and his daughter, the defendant Elizabeth Sparnon Kempster, his executrices, and bequeathed to each of them a legacy of £50 free of legacy duty. He then directed that all his just debts, funeral and testamentary expenses should be paid as soon as possible after his decease. He further bequeathed "the balance of money" to be derived from certain policies of assurance on his life to the plaintiff, and he devised certain real estate to his daughter Deborah Sheppard, the other defendant. The testator died on the 20th of January 1905. The will was proved on the 25th of March 1905. The debts, funeral and testamentary expenses of the testator amount to a little over £200, and the personal estate (exclusive of the insurance moneys and certain gas shares) did not amount to more than £156. The real estate of the testator was estimated to be of the value of £750. This originating summons was taken out by the plaintiff for the determination of the question whether the debts and funeral and testamentary expenses of the testator ought to be paid (so far as might be necessary) out of the real estate in exoneration of the personalty. The question turned on whether the Land Transfer Act, 1897, had rendered the charge contained in the will futile. Section 2, sub-section 3, provides that "in the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies." For the plaintiff it was contended that

the Act had not changed the rule in regard to the marshalling of assets, that *Re Roberts; Roberts v. Roberts* (47 S.J. 30; 1902, 2 Ch. 834) applied, and that the pecuniary legatees were entitled to be indemnified out of the real estate against so much of the debts, funeral and testamentary expenses as should not have been satisfied out of the personalty. For the defendant it was urged that the Land Transfer Act had affected the marshalling of assets, and that it rendered the charge in the will futile: Theobald on Wills (6th ed.), 819. The proviso in sub-section 3 does not conflict with the doubts expressed by Theobald.

## JUDGMENT.

Kekewich, J., in giving judgment, said that before the Act directions such as those contained in the will of the testator were treated as a charge of debts on the real estate, and that if resort was had to the personal estate, legatees could come against specific devisees of the real estate on the ground that testator had intended the debts to be paid out of the real estate. Since the Act real estate is treated as personal estate for the purpose of discharging debts, so that the necessity for the charge is now unnecessary. Although the Act says that the charge is unnecessary, it does not say that it is not there. Sub-section 3 says that nothing shall be altered. The doctrine of *Re Roberts* is still applicable. The debts, funeral and testamentary expenses of the testator ought, therefore, as far as his personal estate not specifically bequeathed is insufficient for the payment of his debts, funeral and testamentary expenses and the pecuniary legacies given by his will, to be borne by the real estate, so as to leave a sufficient part of the personal estate not specifically bequeathed by the will available for payment of the pecuniary legacies.

(50 S.J. 271.)

## Company Law.

## COURT OF APPEAL.

February 13 and 14.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

**Hooper v. Herts.***Company—Shares—Transferor and Transferee—Blank Transfer—**Implied Contract by Transferor.*

This was an appeal by the plaintiff from so much of the judgment of Kekewich, J., as dismissed the plaintiff's claim for damages for breach of an implied contract or obligation on the part of the defendant Whatton not to prevent or delay the registration of a *bond fide* transferee of certain shares in the Smelting and Refining Co. of Aus-

tralia (1901), Lim. The facts were as follows: In the year 1904 the defendant Whatton was the registered holder of 1,467 7 per cent preference shares in the said smelting company. About the 8th of January 1906 he delivered to the defendant Herts the certificate for these shares and a blank transfer of such shares duly executed, and he instructed the defendant Herts to borrow money on these shares. On the 13th of January 1904 the defendant Whatton wrote to the defendant Herts as follows: "With regard to the 'smelting shares, I am anxious to know what you have 'done or can do. Please don't postpone the matter if you 'have not already seen about it. One ought to be able to 'borrow on those shares up to a good value at 4 per cent.'" On the 14th of January the defendant Herts saw the plaintiff and requested the plaintiff to advance him £700 on the security of the deposit of the said shares and signed transfer. The defendant Herts produced to the plaintiff the said certificate and signed transfer, and also showed him the defendant Whatton's letter of the 13th of January. The plaintiff informed the defendant Herts that he was unable himself to find the money required, but that he would endeavour to borrow it from the Mines and Banking Corporation, Lim. The corporation declined to lend anything to either of the defendants, but agreed to lend the plaintiff the sum of £700 on the security of the shares, and also the plaintiff's personal liability, at 10 per cent. interest, the loan to be repaid with such interest within fifteen days from being made. The plaintiff informed the defendant Herts of the decision of the corporation. The defendant Herts thereupon wrote to the defendant authorising him to raise a loan of £700 on the security of the shares and undertaking to indemnify him against any loss. In pursuance of this authority the plaintiff handed the share certificate and transfer to the corporation and received from the corporation the sum of £700, which he paid to the defendant Herts. The name of the plaintiff was filled in the transfer as transferee, and the corporation lodged the certificate and transfer for registration with the smelting company in March 1904. The smelting company, in accordance with the usual custom, notified the defendant Whatton of the lodging of the transfer. The defendant Whatton wrote that the transfer was not in order and should not be completed. In consequence of this notification the transfer of the shares was not completed until after the commencement of the present action. Evidence was given to show that in March 1904 the shares were of considerable value, but that there had been a great fall since, and by the time the transfer was completed they had become practically worthless. Herts never repaid the plaintiff any part of the £700, and the mining corporation pressed the plaintiff for repayment. In these circumstances the plaintiff on the 30th April 1904 commenced the present action claiming as against Herts repayment of the £700

and interest, and as against Whatton a declaration that he was entitled to charge on the shares for £700 and interest and foreclosure or sale, and also for damages for breach of the implied obligation or contract on the part of the defendant Whatton not to do anything to prevent or delay the registration of a *bond fide* transfer for value of the shares. At the date of the commencement of the action the mining corporation had not been paid, but they were paid off by the plaintiff before the trial. The defendant Herts, who had become a bankrupt, did not appear. The defendant Whatton put in a defence denying the authority of Herts to borrow money on the shares. Kekewich, J., found that Herts had authority to borrow money on the shares, and that the plaintiff was entitled to a charge on them. But as regards the claim for damages the learned Judge held that the plaintiff was only a nominee for the mining corporation and that the mining corporation had sustained no damage. He was therefore of opinion that the plaintiff was not in a position to sustain the action, and that he could not be said in it to have suffered damage. He accordingly dismissed the claim for damages. The plaintiff appealed against so much of the judgment as dismissed the claim for damages.

#### JUDGMENT.

The Court allowed the appeal.

Collins, M.R. : It has been argued before us that there was no obligation on the part of the defendant Whatton not to interfere with the registration of the plaintiff, and that, even if there was such an obligation, the plaintiff is not in a position to claim damages. On the first point it seems to me clear, for the reasons given by Lord Esher in *London Founders' Association v. Clarke* (20 Q.B.D. 582), that there does arise between the parties, either by implied contract or out of the relationship of the parties, an obligation or duty that the grantor shall do nothing to

prevent the grantee getting the benefit of his grant. The breach of this obligation or duty is not denied, so we come to the question whether the plaintiff is entitled to claim damages. *Prima facie* the plaintiff as legal transferee has a clear right to damages, but it is suggested that the plaintiff, being a mere nominee, had no right of action in himself, and that in order to see whether there are damages it must be assumed that the real parties to the action are those for whom he is nominee, and it is said that those parties, having been paid, cannot complain that they have suffered loss. It seems to me that to accept this view is to shut one's eyes to the common sense of the matter. The plaintiff was not asserting any right against the lending company, but, on the contrary, he and the lending company were acting together with the view of best establishing their rights to the security. The plaintiff was the person most interested in realising this security, as, if it had been realised, it would have put an end to his obligation to the mining corporation. In those circumstances, the defendant's action has deprived the persons entitled of the benefit of their right to deal with these shares. Of those persons the plaintiff was the person at law entitled to deal with them, and we find that, in the result, the mining corporation are only not sufferers from the defendant's action because they have been repaid by the plaintiff. Why, then, should not the plaintiff get the benefit to which he was entitled, and of which he was deprived by the action of his transferor? I think the mistake of the learned Judge was in treating the plaintiff as a person with no beneficial interest. If we look at the facts of this case, it is plain that he was not a mere nominee. The result is that the plaintiff is entitled to damages and the appeal must be allowed.

Romer and Cozens-Hardy, L.JJ., delivered judgments to the same effect.

(50 S.J. 271.)

**Law Reports.****Bankruptcies and Insolvencies.**

## CHANCERY DIVISION.

February 20.

(Before JOYCE, J.)

**Peat v. Clayton.**

*Company — Shares — Transfer — Certificate — Assignment to Trustee for Creditors — Priority — Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57).*

The question in this case was as to the right to be registered as the owner of certain shares in two companies named the Randfontein Estates Gold Mining Company Witwatersrand, Lim., and the Oceana Minerals Company, Lim. The shares in question had been dealt with under the following circumstances:—

On October 24 1904 an indenture was executed by Clayton, the owner of the shares, purporting to be an assignment of all his property to the plaintiffs for the benefit of his creditors, under the Deeds of Arrangement Act, 1887. This deed was duly registered under the Act on November 7. The debtor's affairs were looked into, and it appeared by his books that he was possessed of the shares in question in this action. The certificates were at once demanded from him by the plaintiffs or their authorised clerk, and the excuse was given that they were in South Africa. On the next day, November 8, notice was given to both companies that Clayton had executed a deed of assignment in favour of the plaintiffs, and asking the companies to make a note of the deed in their respective registers. On November 10 Clayton called on Messrs. Cohen, a firm of stockbrokers, who were defendants to the action, and instructed them to sell the shares; and they accordingly sold them in the ordinary way upon that day. On the 16th he brought the certificates to the brokers and executed a transfer in blank, and received £25 in advance on account. On November 30 the brokers lodged the certificates with the company and got them noted, or endorsed with a statement that they had been lodged. On December 1 the transfers were handed to the purchaser's brokers, who paid the purchase-money to Messrs. Cohen, who, on the same day, settled with Clayton, handing him the balance of the proceeds of the shares. In the case of the Randfontein shares the transfer executed by Clayton was taken by the purchaser's brokers to the company for registration, which was refused because they had received the notice of November 8; and the company's secretary communicated with the plaintiffs. The purchaser's brokers thereupon demanded other shares from Messrs. Cohen which they purchased and delivered in substitution for those originally sold, and which still remained registered in Clayton's name. Messrs. Cohen then applied to Clayton for repayment of the amount which he had received, but without success. In the case of the Oceana shares the transfer from Clayton was to a Mrs. Russell, and her name was in the first instance, in spite of the notice of November 8, entered upon the register of the company as the holder of the shares. The company, however,

subsequently refused to issue certificates for the shares, and Mrs. Russell's name was apparently struck out in the register, leaving the shares still standing in the name of Clayton. Mrs. Russell's brokers then applied to Messrs. Cohen for 40 other shares, which they at once provided. This was an action by the trustees of the deed of assignment against Clayton, the two companies, and Messrs. Cohen, asking for a declaration that the plaintiffs were entitled to the shares in question, and for consequential relief.

It was contended on behalf of Messrs. Cohen, among other defences, that they, having provided the purchasers with good shares in place of those as to which registration was refused, were entitled to stand in the shoes of those purchasers, and to have Clayton's shares registered in their names. The companies could not be affected with notice of any trust, and were bound to register Messrs. Cohen as owners of the shares.

## JUDGMENT.

Mr. Justice Joyce, in giving judgment, said that this was an action to determine who was entitled to 40 shares in the Randfontein Estates Company and 40 shares in the Oceana Minerals Company, all fully paid up. After stating the facts with reference to the shares, his Lordship, continuing, said that, as he understood the law, where there were several claimants to shares registered in the name of a third person, the equitable title which was prior in time prevailed, unless the claimant under a subsequent equitable title proved that, as between him and the company, he had acquired an absolute and unconditional right to be registered as the owner of the shares before the company received notice of the other claim. In his Lordship's opinion, therefore, the plaintiffs were entitled to these 40 shares in the Randfontein Company. But Messrs. Cohen claimed a lien upon them. If they had any lien, however, it was only equitable, and could only be upon Clayton's interest, which was subject to the right of the plaintiffs under the deed of assignment. Then it was said that the plaintiffs had disentitled themselves by negligence. His Lordship saw no negligence on the part of the plaintiffs, unless it were, as Messrs. Cohen alleged, in not adopting the procedure now substituted by Order xlv., r. 3, for the old procedure by *distingas*. He could not accede to the contention that by omission to adopt this course the plaintiffs must be postponed. If they had proceeded by *distingas* the result would have been just the same. It would only have prevented the company from registering the transfer to the purchaser, which in fact they did refuse to do by reason of the notice given to them on November 8 on behalf of the plaintiffs. It was suggested, but not seriously contended, and at all events there was no evidence to show that that *distingas* would have prevented what was called the certification, or the noting on the back of the transfer that the certificates had been lodged. As his Lordship understood that note, it only amounted to a representation that a document had been lodged with the company, apparently in order, and showing *prima facie* that the transferor was entitled to the shares, but it was no warranty of the transferor's title to the shares, or as to

the validity of any of the documents. Messrs. Cohen never inquired of the company whether there was any *distringas* or other stop against the registration of that transfer of the shares. So much for the Randfontein shares. As to the Oceana shares, the case was practically the same, the only difference being that on referring to the register of members of that company (and there was no other evidence upon the subject) it seemed that the transfer from Clayton of the 40 shares, which was in fact to a Mrs. Russell, was in the first instance entered upon the register, though under what circumstances or whether by any express authority of the board did not appear. At all events no such registration ought to have been made, having regard to the notice the company had received on November 8, without previous communication with the giver of that notice. Mrs. Russell, however, was not able to get from the company any certificate for the shares, and the brokers applied to Messrs. Cohen and demanded other 40 shares, which were at once provided. The transfer of those registered and certificated was issued in due course, and the registration of the former transfer from Clayton to Mrs. Russell cancelled, or not proceeded with, no doubt with Messrs. Cohen's concurrence, so that in the result the shares were in the name of Clayton still. They were not in the name of Messrs. Cohen, who had no transfer from Mrs. Russell. It was contended that the true view was that Mrs. Russell still remained on the register as the owner of those 40 shares sold to her brokers by Messrs. Cohen on Claytons behalf, and that Messrs. Cohen had a lien on those shares. Mrs. Russell did not claim the shares, and she was not made a party to the action. His Lordship did not think that she had any such legal interest as contended. At all events, Messrs. Cohen's interest, if any, was equitable only. In his Lordship's view they had no present absolute unconditional right to be registered as owners of those shares before the company had notice of the claim of the plaintiffs, or, indeed, at any time. As in the case of the Randfontein shares, so in the case of the Oceana shares, his Lordship was of opinion that Messrs. Cohen's lien, if any, was only upon Clayton's interest, which was subject to the prior equitable rights of the plaintiffs. When Mrs. Russell applied for registration, the money received by Messrs. Cohen on the sale had gone to Clayton. A *distringas* would not have prevented its payment, although it would have prevented any registration of Mrs. Russell's transfer, and Messrs. Cohen would have been, if possible, in a worse position than they were now. In the case of the Oceana shares, as well as in the case of the Randfontein shares, a *distringas* would not have saved Messrs. Cohen from the loss they sustained by trusting Clayton and upon his instructions proceeding to sell without first ascertaining that there was no stop or impediment to the registration of the transfer of the shares. His Lordship must not be understood to say that it was usual to do that. What he had already said with reference to the matter and the absence of negligence on the part of the plaintiffs applied to the case of the Oceana shares just as much as to that of the Randfontein shares. The result was that the plaintiffs were entitled to succeed in their action.

(22 Times Law Reports, 312.)

## KING'S BENCH DIVISION.

February 23.

(Before BROUGHAM, Registrar.)

*In re Muzeen.*

*Bankruptcy—Discharge—Suspension—Assets not equal to 10s. in the Pound—Suspension for Two Years—Dating back Period of Suspension—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, subsec. 2, 3 (a).*

This was an application for an order of discharge by George Edward Barugh Muzeen, who was adjudged bankrupt on December 1 1904; being described as of Douthwaite Hall, Kirbymoorside, Yorkshire. The receiving order was made on November 1 1904 on the petition of creditors filed in the County Court of Yorkshire, holden at Northallerton, and the proceedings were transferred to the High Court of Justice by order dated January 12 1905. The public examination was concluded on March 10 1905. The claims in the bankruptcy were estimated at £5,931 4s. 8d., and a sum of £542 os. 6d. had been realised in respect to the estate.

Mr. G. W. Chapman, Official Receiver, reported that it appeared that the bankrupt, seven or eight years before his failure, purchased the Douthwaite Hall estate in Yorkshire, raising the purchase-money by mortgaging his reversionary interest in a property known as the Normanby estate, of which his mother was tenant-for-life. On her death he came into possession of the last-mentioned estate, and under his grandfather's will he became entitled to a property called the Bowforth estate. All the estates were mortgaged by the bankrupt for considerable sums, and the net income, after providing for interest and outgoings, was about £200 a year. The bankrupt's expenditure was estimated at £800 a year, and he attributed his insolvency to the excess of this amount over his income, to interest on loans, and depreciation in the value of his property. He resorted to moneylenders to supply his wants, but until his estates were sold by the mortgagees he seemed to have considered that they would realise a sufficient sum to pay all his debts in full. The Official Receiver, in conclusion, reported the statutory ground of opposition that the assets were not equal to 10s. in the pound on the amount of unsecured liabilities.

Mr. George Goodman, solicitor for the bankrupt, urged that if it was necessary to suspend the discharge for two years the suspension should be dated back to the time of the conclusion of the bankrupt's public examination.

### JUDGMENT.

Mr. Registrar Brougham said that in the circumstances of this case it was necessary that the discharge should be suspended for the minimum period of two years, and he had no power to order that the suspension should run from a date anterior to the hearing of this application. The discharge would be suspended for two years from to-day on the ground reported by the Official Receiver.

(22 Times Law Reports, 322.)

**Company Law.****CHANCERY DIVISION.**

February 22.

(Before KEKEWICH, J.)

**Biggood v. Nile Valley Company, Lim.**

*Company—Reconstruction—Ultra Vires—Sale to New Company—Option to Shareholders to take Shares in New Company—Time Limit—Forfeiture of Shares.*

This was a motion by two shareholders of the Nile Valley Company, Lim., for an injunction to restrain the defendant company and its directors from carrying into effect a draft agreement for the sale of the assets of the defendant company to a new company. The Nile Valley Company, then called the Nile Valley New Company, was incorporated under the Companies Acts, 1862-1900, in April 1903, with a nominal capital of £250,000, divided into 250,000 shares of £1 each, of which 218,257 had been issued. These shares were fully paid. The principal object of the company, as stated in the memorandum of association, was to acquire certain mining concessions in Egypt, and to carry on the business of a mining company in all its branches. Among the other objects defined by the memorandum of association were the following:—“(10) To sell, let, dispose of, or deal with the undertaking of the company, or any part thereof, for such consideration as the company think fit, and, in particular, for “shares, debentures, or securities of any other company “having objects altogether or in part similar to those of “this company. To distribute any of the property of the “company among the members in specie.” “(15) To sell, “improve, manage, develop, lease, mortgage, dispose of, “turn to account, or otherwise deal with any part of the “property and rights of the company.” “(20) To distribute among the members in specie by way of dividend “or bonus, or upon a return of capital, any property of the “company or any proceeds of sale or disposal of any property of the company, but so that no distribution amounting to a reduction of capital be made except with the “sanction (if any) for the time being required by law.” On February 3 1906 a circular was issued to the shareholders of the company stating that the directors, finding the funds in hand not sufficient to enable the company to bring its operations to a successful issue, had decided to authorise the sale of the undertaking and assets to a new company upon the terms of a draft agreement, the heads of which were shortly stated in the circular. The main feature of the scheme of reconstruction was that the assets and undertaking of the old company were to be sold to the new company for the same number of £1 shares as those issued in the old company, but subject to a liability of 4s. per share. The agreement was expressed to be made between the Nile Valley Company, Lim. (hereinafter called the old company), of the one part, and the Nile Valley (New) Company, Lim. (hereinafter called the new company), of the other part. Clause 1 provided for the sale to the new company of the whole of the assets and the undertaking of the old company. Clause 2 provided that as part of the consideration for the sale the new company should pay

the debts of the old company. Clause 3 provided that, as further part of the consideration, if the old company should go into liquidation within six calendar months from the date of the agreement, the new company should pay the expenses of the liquidation. Clause 5 provided that, as further part of the consideration, the new company should allot and issue to the old company or its nominees 218,257 shares in the new company of £1 each, with the sum of 16s. credited as having been paid thereon. Clause 6 provided that, in the event of the old company going into liquidation before the 218,257 shares should have been allotted to the old company or its nominees, every member of the old company should be entitled as of right to claim an allotment to himself of one £1 share in the new company, with 16s. credited as having been paid thereon, and it provided, further, that within 14 days of the commencement of the winding up the liquidator should give notice in manner therein mentioned to the members stating the time within which the claim for allotment must be sent in to the new company, and it further provided that a registered member must claim within 14 days from the date of the notice, and that a bearer member must claim within a month of the first advertisement of the notice as therein mentioned, or within such extended time as might be fixed by the liquidator. The clause then provided as follows:—“(d) As regards that proportion of the “said shares in the new company which members of the “old company shall be entitled to claim as aforesaid, but “shall not within the periods of 14 days or one calendar “month or within such extended time as aforesaid claim, “the said liquidator shall use his best endeavours to sell “the same for what they will fetch, and the proceeds of “sale thereof after paying all expenses of and incident to “the sale shall be distributed rateably among the members “who if they had claimed would have been entitled to “such shares in accordance with their rights and “interests.” At an extraordinary meeting of the company, held on February 12 1906, a resolution approving this agreement was passed by the shareholders. Thereupon the writ in this action was issued by the plaintiffs and served on the company, together with notice of motion for an injunction. On February 14 a notice of a meeting to pass a resolution for the winding up of the company was issued to the shareholders, but this meeting had not yet been held. On behalf of the plaintiffs it was contended that the draft agreement was really a device to raise further capital from the existing shareholders, and was *ultra vires*.

**JUDGMENT.**

Mr. Justice Kekewich said that he had no doubt that this agreement could not stand as it was. It was admitted that this was not a scheme intended to take effect under the provisions of the Companies Act. The sale of the company's assets was to be carried through in a winding-up, but not under the statutory provisions. Therefore it was not necessary to see how far this scheme differed from what was provided by the statute. Though there was to be a winding-up, it was to be a voluntary liquidation, and the company was still in existence, was still carrying on business, and was still entitled to sell as a going concern. ”

the terms of the memorandum of association this company had power to sell not only its undertaking, but any part of its property as a going concern—and it might sell for shares—he would assume that that power extended to the property as well as to the undertaking—and if a company might sell for shares it might sell for partly-paid shares. So far there was no difficulty. Therefore this company might make a sale of its whole undertaking and assets to another company for partly-paid shares in that other company. To work that out properly all the shares should be under the control of the liquidator. He would have to realise the shares, and after paying expenses divide the proceeds among all the shareholders according to their nominal interests in the company. That would be the proper mode of proceeding, but this company did not propose to follow that method. The proposal was to allot the shares of the new company direct to the shareholders in the old company. He was not sure whether that could be done. The shares in the new company were partly-paid shares, and the liquidator could not compel the shareholders of the old company to take up the shares of the new company, imposing a liability upon them. That difficulty had been foreseen and an attempt was made to get over it. Those who were willing to accept partly-paid shares with this liability upon them were to take the shares. The difficulty was as to those who were not willing to accept the shares. They were entitled to their share of the assets of the company, but it was not proposed to give them anything of the kind. It was proposed, if they obstinately refused to take any shares, to give them something else. What else? The shares which were not taken were to be sold by the liquidator for what he could get for them. There was a certain time within which the refusal was to be expressed and within which the liquidator was to sell. As at present advised his Lordship saw no reason to object to that time-limit in either case or to say that it was not a reasonable limit. When the liquidator had sold the shares he was to distribute the proceeds among the shareholders who had not come in rateably according to their rights and interests. He did not follow the meaning of the language in which this method of distribution was expressed. He did not understand what was meant by rights and liabilities in that connection, or how there could be anything open to discussion having regard to the word "rateably." "Rateably" implied that each dissentient shareholder would get his proportionate share with the others of the total of the proceeds, less the expenses of the sale. That might be very unfair on some particular shareholder. His shares might have been sold at a good price and then there might have been a slump—to use a vulgar expression—and the rest of the shares might have been sold for an old song. Yet the holders of those shares would have their proportion of the proceeds in the same way as the holder whose shares had been sold for a larger sum. That appeared to his Lordship to be unfair. But apart from that, was this scheme fair on a dissentient shareholder at all? It was putting a pistol to his head and telling him if he refused to come in he would only get his proportion of the total proceeds of sale of the shares of all the dissentient shareholders; if he did come in he must accept shares with a liability upon them. In his Lordship's opinion this came within the principle of *Manners v. St. David's Gold and Copper Mines, Lim.* (1904, 2 Ch. 593). There was an obvious distinction between that case and this, because there the dissentient shareholders could get nothing inasmuch as the proceeds of the sale of their shares were to go to the pur-

chasing company. Here the shareholder who refused to come in was to get his rateable proportion of the proceeds. Was that a difference in substance? He thought not. It was telling the dissentient shareholder that, although he was under no obligation to take up the new shares, he was to forfeit his shares unless he did. That was no part of the bargain under which he subscribed for his shares. It was not in the bond. His Lordship therefore proposed to restrain the company from carrying the agreement into effect in its present form.

(22 *Times Law Reports*, 317.)

## CHANCERY DIVISION.

February 23.

(Before WARRINGTON, J.)

### The Automatic Self-Cleansing Filter Syndicate Company, Lim. v. Cuninghame.

*Company—Directors—Management—General Meeting of Shareholders—Resolution for Sale of Assets of Company—Refusal of Directors to carry out Resolution.*

This was a motion by the plaintiffs in the above-mentioned action, who were the company and one of the shareholders, suing on behalf of himself and all other shareholders, asking that the defendants, the directors, might be ordered forthwith to affix the seal of the plaintiff company to a certain contract, and for an interlocutory injunction to restrain the defendants from dealing with or disposing of the assets of the plaintiff company in any manner inconsistent with the terms of the contract. By the articles of association the management of the business and the control of the company were vested in the directors, and among other powers they had power to sell any property of the company. They could only be removed from office by a special resolution.

On the requisition of certain shareholders a meeting of the company was, in January 1906, convened by the directors, and at that meeting a resolution was passed by a simple majority for the sale of the business to a new company, and the directors were directed to cause the common seal of the company to be affixed to a contract which was laid before the meeting, and which had been prepared at the instance of the requisitionists. The directors, being of opinion that it would not be to the interest of the company that the contract should be carried out, declined to comply with the resolution.

G. Cave, K.C., and A. H. Jessel, for the plaintiffs, contended that the shareholders in general meeting had the right to give the directors, who were their agents, directions as to the way in which they should exercise their powers, and they relied on *The Isle of Wight Railway v. Tahourdin* (53 L.J. Rep. Ch. 353; L.R. 25 Ch.D. 320).

R. F. Norton, K.C., and L. Mossop, for the defendants, submitted that the proper course for the company to pursue if dissatisfied with the action of the directors was to pass a special resolution dismissing the directors and appointing a new board.

## JUDGMENT.

Warrington, J., in refusing the motion, said that, having regard to the articles of association of the company, the resolution which was passed at the meeting of the shareholders by a simple majority was one which the directors were not bound to carry into effect. The case of *The Isle of Wight Railway v. Tahourdin* was a case under the Lands Clauses Act, and the resolution it was proposed to submit to the meeting as to which the question arose was a resolution which could be carried by a simple majority of the company. Moreover, all that was decided there was that the Court would not prevent a meeting of the shareholders from being held, and no decision was given as to the validity of any resolution that might be passed at such meeting.

(L.J. 140.)

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**Law Reports.****Accountancy and Auditing.****KING'S BENCH DIVISION.**

March 9.

(Before WARRINGTON, J.)

**The Society of Accountants and Auditors (Incorporated 1885) v. The London Association of Accountants.***Alleged Infringement of Accountancy Designation—The title "Incorporated Accountant."*

This was a motion to stay the action on the ground that there is no such body in existence as the plaintiffs, as described, and that the action should be dismissed with costs as against the solicitor who issued the writ.

Mr. Terrell said that in the action of *The Society of Accountants and Auditors (Incorporated 1885) v. The London Association of Accountants, Lim.*, he had a motion on behalf of the defendants to stay the action because there was no such plaintiff company. It was a very curious action, brought by the plaintiff company, claiming a monopoly for its members of the title "Incorporated Accountant."

Mr. Rowden said he had a cross-motion. He did not suppose his friend thought his would not come on first.

Mr. Terrell: Of course it must come first.

Mr. Rowden: The other I shall ask to stand over.

Mr. Terrell: I do not think this affects it at all. Proceeding, counsel said the action was against one of the members of the defendant society to restrain him from using the title and designation of "Incorporated Accountant," and from using in letters, accounts, notices, and other advertisements, the designation in such a way as to lead to the belief that the defendant was a member of the plaintiff society, and to restrain the defendant society from holding out or representing by advertisement or otherwise that its members were entitled to use any such designation as aforesaid. The importance of this was, that in connection with Revenue Accounts the Income-tax Commissioners would not hear a solicitor or counsel on bills, but would only hear accountants who were members of an incorporated society. Those were the words of the Act. It was, therefore, generally known that a person who was able to appear as an auditor before the Income-tax Commissioners must be what was called an Incorporated Accountant. Now, the plaintiff society allocated to themselves a monopoly of the style of Incorporated Accountant. As a matter of fact, there was no such society as that, the title of which appeared in this

action. There was a society called The Society of Accountants and Auditors only; but they added to that title the word "Incorporated," for the purpose of supporting the idea that they were Incorporated Accountants and nobody else was. They were registered as a limited company under the Act.

The Judge: Without the use of the word "Limited."

Mr. Terrell said that was so—under the section of non-profit companies. Their title was registered as The Society of Accountants and Auditors; but they chose—for the purpose of lending to themselves the shadow of a claim to be solely entitled to the word "Incorporated"—to add to that title the word "Incorporated" and the date of incorporation. Now, of course, a company could only carry on business and sue in its own title, and could not add to or take away from that title.

The Judge asked what authority there was for staying proceedings and applying for costs as against the solicitor.

Mr. Terrell said he did not find any case in which an action had been fought in the name of a company which did not in fact exist.

The Judge: If an action is brought in the name of a non-existing plaintiff, there is no plaintiff.

Mr. Terrell: Where they have brought an action without the retainer or authority of the person, they have stayed proceedings, and the solicitor pays the costs.

The Judge: I suppose that if a solicitor brings an action in the name of John Smith, and there is no such person—supposing there is no John Smith, or any person who was existing for that purpose—he might be ordered to pay the costs.

Mr. Terrell: If a writ is issued in the name of John Smith and he says "I have never authorised it," it is the same thing in principle.

The Judge: What you have been saying is rather a defence of the action.

Mr. Terrell: No; if I am being sued by a non-existing person, I am entitled to ask for the proceedings to be stayed. You will remember, perhaps, that where the address of a plaintiff is not truly stated in the writ, it stays it. You will see the difficulty. Supposing, for instance, I want to issue execution against them, the Sheriff finds there is no such company to levy upon.

The Judge: There is no objection to "The Society of Accountants and Auditors," and then to its being stated in the plaintiffs' claim that this is a Society which was incorporated in 1885?

Mr. Terrell: None whatever.



Mr. Rowden: Mr. Kirby did ask that he might amend the writ.

Mr. Terrell: You cannot put part of the statement of claim in the title. It is important to us, because the word "Incorporated" is the all-important question in this action, and, if they are entitled to sue in this name as "Incorporated," it does lend colour to their claim that they are the only persons entitled to sue against the use of the word "Incorporated." I ask you to amend by striking out these words "Incorporated 1885."

The Judge (to Mr. Rowden): What do you say to that?

Mr. Rowden: I submit that this motion is a gross abuse. As a matter of fact this is merely a case, as I submit, of an innocent mistake—something added to the style and title—

The Judge: I am not sure about that.

Mr. Rowden: Will you look at our book? We are called "The Society of Accountants and Auditors," and then on our book we are accustomed to add "Incorporated."

The Judge: That is a statement of fact which may be quite correct, but it is not part of your title.

Mr. Rowden: As a matter of fact, because some words are added to the description of a plaintiff on the writ, does the Court deal with that on the same footing as where the writ is—

The Judge: I can understand a case where it does not matter a bit. If a solicitor by mistake calls a plaintiff "John James Smith," and his name is "James Robertson Smith," I can understand that it would not make much difference; but I am not so sure about it here.

Mr. Rowden: Does it make any difference as a matter of fact? It is only a question of putting it there instead of stating it in the statement of claim. The notice of motion is to stay all proceedings, and that my clients are to be ordered to pay costs. This is an error which is capable of amendment, and the Court is asked to apply the same rule to that as where a solicitor issues a writ in the name of a plaintiff without any authority at all. Your Lordship sees that they have filed affidavits in answer to my writ, so there is no doubt about who the real plaintiff is.

The Judge: I follow that. If you amend by stating the word "Incorporated" somewhere in the body of the writ, and not as part of the title—

Mr. Rowden: I am told that if this had been pointed out on the summons of direction the Master must have given leave to amend, and all expenses of the motion would have been saved. As a matter of fact, the Master would have given leave to amend the writ. If you think it should be amended —

The Judge: I think you should amend it by striking out the words "Incorporated 1885" in the title. You may state it in the body of the writ if you like, and in the endorsement.

Mr. Rowden: As regards any order as to costs.

The Judge: That is another matter.

Mr. Rowden: My position as regards that is that it is a pure misconception. I challenge my learned friend to produce any authority for application to stay proceedings. This could be done on the summons for direction. To be brought here on a cross-motion in order to make us pay the costs of the motion is a gross abuse. Really, the only principle which applies to it at all is where there is no authority to issue a writ at all. If your Lordship thinks I ought to amend, I have already asked leave.

The Judge: I will give you leave to amend by striking out the words "Incorporated 1885," and inserting them in the description of claim, if you like. The question of costs, Mr. Terrell, is another matter.

Mr. Terrell: In Chambers they insisted on the right to put that "Incorporated in the year 1885" in. If they had said then that they would put it in the body of the claim there would have been no difficulty.

The Judge: There is no substance in it.

Mr. Terrell: I submit that there is if they put it in their title.

The Judge: What does it matter if they do?

Mr. Terrell: They did it intentionally, and they have insisted upon it up to the present time. I will take the case I have submitted to your Lordship. Supposing I had an order for solicitor's costs against them I could not recover my costs. If I had a judgment against them I could not recover it and put a levy on the society which my friend represents. The proper step is to stay. They went to the Master on the summons for direction, and the Master said the Court would give leave to amend, but they insisted on having "Incorporated" in the title, and I submit that I am entitled to my costs in any event.

The Judge: I think there has been a mistake on both sides. I do not think I ought to deal with it so severely as Mr. Terrell suggests. In my opinion it is wrong. The words "Incorporated 1885" ought not to have been made part of the title of the company; but I do not think that any substantial injustice was done, because I think the objection could just as well have been taken in defence to the action as in this way. I think the plaintiffs ought to amend by stating the fact of their incorporation, but not as part of their title; and I think the best way to deal with the motion is to say there will be no costs given on either side.

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Mr. Rowden: Your Lordship now gives me leave to amend?

The Judge: Oh, yes.

The motion was directed to stand over for a week.

## ***Bankruptcies and Insolvencies.***

### KING'S BENCH DIVISION.

February 28.

(Before GIFFARD, Registrar.)

*In re Dallmeyer.*

*Bankruptcy—Discharge—Conditional Discharge—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, subsecs. 2, 3.*

This was an application for an order of discharge under the Bankruptcy Act, 1890, section 8, which provides that the Court shall, on proof of any of certain facts specified, either (i.) refuse the discharge; or (ii.) suspend the discharge for a period of not less than two years; or (iii.) suspend the discharge until a dividend of not less than 10s. in the pound has been paid to the creditors; or (iv.) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the Official Receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct. Three of such specified facts were proved—namely, that the bankrupt's assets were not of a value equal to 10s. in the pound on the amount of his unsecured liabilities; that the bankrupt had contributed to his bankruptcy by unjustifiable extravagance in living; and that the bankrupt had on a previous occasion made an arrangement with his creditors.

The report of Mr. E. Leadam Hough, Senior Official Receiver, having been read, and evidence of the bankrupt's income and prospects having been given,

Mr. Frank Mellor asked that the bankrupt should be ordered to pay the trustee in the bankruptcy any income received by him over £500 a year.

Mr. Carrington, appearing for a creditor, supported Mr. Mellor's application.

Mr. Lampard, for the bankrupt, opposed any order affecting the debtor's future earnings, and asked that the discharge might be suspended for two years as provided by the statute.

Mr. Registrar Giffard granted the discharge, and ordered the bankrupt, after setting aside £500 a year out of his earnings for his own support, to pay the surplus, if any, to the trustee, until the creditors should have received 10s. in the pound on their debts; yearly accounts to be rendered by the bankrupt.

(22 *Times Law Reports*, 337.)

### KING'S BENCH DIVISION.

March 1.

(Before HOPE, Registrar.)

*In re Hencke.*

*Bankruptcy—Composition—Acceptance after public examination concluded—Reopening Examination—Bankruptcy Acts, 1883 (46 & 47 Vict. c. 52), subsecs. 23 (1), 104 (1); and 1890 (53 & 54 Vict. c. 71), s. 3.*

This was an application for the approval of a proposal of composition under the Bankruptcy Act, 1883, section 23. The debtor was adjudged bankrupt on October 11 1904; his public examination was concluded on November 24 1904; and at a general meeting held on January 16 1906 a proposal for a composition was accepted by a statutory majority of his creditors. The proposal having been accepted after the conclusion of the public examination, the question arose whether the law applicable to the case required that the public examination of the bankrupt should be reopened and reconcluded before the Court could approve the proposal. Mr. Registrar Hope approved the proposal on February 22 last subject to the determination of this question.

Mr. Registrar Hope: The question has been raised before me whether, when a debtor after he has been adjudicated bankrupt brings in a scheme of arrangement at a meeting of his creditors held after the first meeting of creditors has been held and the public examination has been concluded, it is necessary to reopen the public examination before approval by the Court. My opinion is that it is not necessary; but I reserved my decision, as it was said that the practice had not been uniform. The other Registrars concur in my view, although there have been cases in which the public examination has been reopened under these circumstances. We consider that it need not be reopened, but that under the general powers of the Bankruptcy Act, 1883, section 104 (1), it can if necessary be reopened, although this should be done only in those cases where there appears to be a good reason for further investigation for the information of the creditors or the Court. As the matter was discussed before me I will

express my own reasons. Under the Bankruptcy Act, 1883, section 23 (1), where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication resolve to entertain a proposal for a composition or a scheme; "and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication." There is no limit as to time imposed upon the creditors by the terms of that section, provided that the debtor has been adjudicated, whereas before adjudication they are restricted as to time, for in that case they must meet before the conclusion of the public examination—Bankruptcy Act, 1890, section 3 (2). Up to the point, therefore, when a composition or scheme is "entertained"—Bankruptcy Act, 1883, section 23 (1)—by the creditors (which must be the same as "accepted" by the creditors in other sections), it seems to me that there is a difference of procedure in the two cases; but I think that when the creditors have exercised their powers in either case then the subsequent proceedings to be taken are the same in one case as in the other. That is to say, the provisions of the Bankruptcy Act, 1890, section 3 (5) to (19) inclusive, relating to proceedings in Court and consequences to the creditors, the debtor, and others, take effect in both cases; and, so far as these subsequent proceedings are concerned, the matter can go forward provided the public examination has been concluded—Bankruptcy Act, 1890, section 3 (6). The alternative construction of section 23 (1) which has been suggested is that the later words "and thereupon the same proceedings shall be taken," &c., import the Bankruptcy Act, 1890, section 3 (2), into the proceedings of the creditors, so that the meeting at which the creditors enter-

tain or accept the composition or scheme must be held before the public examination is concluded; and consequently in the case I am dealing with the public examination would have to be reopened. I think, however, that such a construction is strained, and that the natural construction is that proceedings and consequences subsequent to the proposal being entertained or accepted by the creditors and only those proceedings and consequences are to be the same in the case of a composition or scheme accepted after adjudication as in a composition or scheme accepted before adjudication. It is worth noticing, as Mr. Hansell pointed out, that under the repealed section 18 (3) of the Bankruptcy Act, 1883, which did not contain a provision like the Bankruptcy Act, 1890, section 3 (2), the subsequent or confirmatory meeting of creditors could not be held until after the public examination was concluded. It would, therefore, have been in order for the composition or scheme to be accepted by the creditors after the conclusion of the public examination. It is unlikely that the Legislature intended in 1890 to restrict the power of the creditors as to holding meetings after adjudication by incidentally incorporating into the Bankruptcy Act, 1883, section 23 (1), words which are primarily employed in the Bankruptcy Act, 1890, section 3 (2), with reference to schemes before adjudication. I therefore hold that the public examination need not be reopened, having regard to the construction of the statutes. But I am of opinion that the Bankruptcy Act, 1883, section 104, gives power to reopen it if desirable. In the case I have to consider nothing has been brought to my notice which makes it desirable.

(22 *Times Law Reports*, 338.)

## Law Reports.

### Accountancy and Auditing.

#### CHANCERY DIVISION.

March 16.

(Before WARRINGTON, J.)

#### **The Society of Accountants and Auditors v. Goodway and the London Association of Accountants, Lim.**

*What is an Incorporated Accountant? — Trade Name — Exclusive User—Application for Injunction.*

Mr. Rowden, K.C., appearing with Mr. Kirby, said in the action of *The Society of Accountants and Auditors v. Goodway and The London Association of Accountants, Lim.*, he had a motion for an injunction in which he was in a position to move for an order.

Mr. H. Terrell, K.C., said he was, with Mr. Ashton Cross, for the defendants, and there was a great deal of conflict in the evidence that had been filed. They wished the matter disposed of finally as soon as possible, and what he suggested was that his Lordship should fix an early day for hearing the action with witnesses, and then they could dispose of it once for all.

His Lordship said he understood it was an important question not only between the parties, but generally.

Mr. Rowden replied that no doubt it affected a considerable number of persons, and they were very anxious to get something in the nature of relief or protection. Their view was that it was not so much a serious conflict of evidence as a question of law. It was not a case which he was not justified in bringing on on motion, because every day they were getting complaints. They had been carrying on business for twenty years, and it was most essential that they should get something in the nature of interlocutory relief.

Mr. Terrell agreed that there was a serious question of law, but his friends had filed affidavits last night which defendants might want to answer. It would be better if his Lordship could fix it for hearing, say, in a fortnight's time.

Mr. Rowden said he would not ordinarily ask for an order where there was a question of fact, but he could shorten it to this extent: It was a question of the user of the words "Incorporated Accountant."

Mr. Terrell said he thought that even if plaintiffs got the point of law decided they could not ask for an order, because then the question of the credibility of the evidence would have to be determined.

Mr. Rowden said he did not agree. His difficulty was that they could not get ready for trial for some time. It was most important to plaintiffs that they should get some order.

Mr. Terrell said he should want to answer the evidence filed last night.

Mr. Rowden said if that evidence was objected to he would withdraw it. There were two defendants, Goodway, who was an accountant at Birmingham, and the London Association of Accountants, Lim. In the notice of motion plaintiffs asked for an injunction that Goodway might be restrained from using in connection with his business of an accountant and debt collector the title or designation of "Incorporated Accountant," and from using letters, notices, circulars, or other advertisements designating him Incorporated Accountant, or leading to the belief that he was a member of the plaintiff society. As against the other defendants, that they might be restrained from holding out or representing by advertisements or otherwise that its members were entitled to use any such designation. Until twenty-five years ago the profession of accountants seemed to have had no formal organisation at all. In 1880 the Institute of Chartered Accountants was formed under Charter, and five years later the plaintiff Society was registered under the Companies Act 1862, with licence from the Board of Trade that the use of the word "limited" might be dispensed with. Since then it had existed as an organisation for promoting the interests and position of accountants. Its members were divided into two classes, Fellows and Associates. It had 2,000 members all over the country, and for twenty years had conducted examinations which seemed to be very *bona fide* tests. Their primary object was to raise the status of accountants, and they were very careful who they admitted as members, there being a Committee to exercise control over the members. They also had branches in various large towns, such as the Manchester District Society of Accountants and Auditors. The most important point was this. Shortly after plaintiff Society was started it was found desirable to adopt as the designation of their members when they received certificates after examination the name "Incorporated Accountant." There would be a very considerable body of evidence before the Court that that name had come to mean a member of the plaintiff Society. That was denied on the other side, but the general reputation of the Society would be proved very clearly from the evidence, the effect of which was that up to this time the two Societies—the Chartered Accountants with their red book and the Incorporated Accountants with their blue book—had been the two recognised bodies of accountants. Last year the defendant Association was started, and almost from the very first they recommended their members to use the title "Incorporated Accountant," and it seemed that great importance was attached to the title. A member of an incorporated society was entitled to appear in bankruptcy proceedings. That would extend

to a member of the defendant Society. The only question therefore was as to the use of the word "Incorporated." Plaintiffs' complaint was chiefly in respect of the use of that word. Defendants had, no doubt, suggested to their members that they should add to the words Incorporated Accountant "London Association," but they claimed the right to dispense with those words, and no doubt in practice the two latter words often dropped out. They had Associates and Fellows, and they admitted a lower grade of the profession than plaintiffs did—namely, rent and debt collectors. Their position was also different as regards examinations. He put plaintiffs' case in this way. He invoked an analogy of a trade-name, and it was said that he was claiming a monopoly of what was a mere trade description. It was the Society that was incorporated, not the individual members, and he should submit that "Incorporated Accountant"—if it had any primary meaning—meant a person who was a member of a Society existing for the benefit of such a profession as accountants. He thought that helped his case and weakened the suggestion that this was a mere descriptive term to which he had no right of monopoly.

His Lordship: How do you put the interest of the plaintiff Society? Do you mean that they will suffer by not getting so many members?

Mr. Rowden said there was a right in a society existing for the benefit of a profession to have their interests protected. He proceeded to quote the judgment in a Scotch case of similar character. That judgment was, he thought, distinctly in his favour, for it was there laid down that all those connected with a profession or trade had a legal right to prevent the assumption of their status by other persons who were not similarly members. It was also said that if a public body had adopted a name, and the adoption of that name by the members of that body was generally accepted by the public as understood to apply only to the members of that body, they had a legal right to prevent any unauthorised use of that name by persons outside that body.

His Lordship said he understood the foundation of the judgment was that when a public body had adopted a name which its members should apply to themselves, and when the public accepted that name as meaning members of that body, then there could be no unauthorised use of it.

Mr. Rowden agreed. He then proceeded to read affidavits in support of his motion. James Martin, the Secretary of the plaintiff Association, set forth in his affidavit the aims and objects of the Association, which was to provide a central organisation for accountants to elevate their status and advance the interests of the profession. Owing to the care with which members were selected, and the supervision of the Committee of Examination, the members were generally known to be men of

unquestionable character and good standing. It being found desirable to adopt some words which should designate the users as members of the Society, the words "Incorporated Accountant" were adopted, and had been used for some years, and were now well known by the public as indicating a member of the plaintiff Society. It had come to the knowledge of the Society that many persons who were not members of the plaintiff Society were using the words "Incorporated Accountant," and complaints were constantly being made in consequence. The defendant Association had recommended that their members should call themselves Incorporated Accountants, and add the words "London Association" after, and which, they said, would make them safe, but in many cases it had been found that the later words had been dropped out. The affidavit further said it was highly prejudicial for members of the plaintiff Society to have this state of things existing, so that it was impossible to tell who were and who were not members of the Society. Counsel, in conclusion, read a number of other affidavits, and said he should contend that the use of these words after the name indicated that the user was a member of the plaintiff Society, and was a man of high professional standing and capacity.

Mr. Terrell read affidavits for the defence. That of Mr. Lewis, the Secretary of the defendant Association, set out the objects and rules of the Association, and said though it had only been in existence for about a year, it had over 400 members, many of whom were men of high professional skill and standing, among these being Chartered Accountants. In no case was a person allowed to become a member unless he had satisfied the Council he possessed the necessary amount of professional skill and was a person of good standing. In July 1905 the Association decided to recommend its members to use the words "Incorporated Accountants, London Association," after their names, which, they held, was a concise and convenient description of their profession. No doubt some members of the plaintiff Society called themselves "Incorporated Accountants," and the defendant Association had no desire to represent to the public that the members of the defendant Association were members of the plaintiff Society, or to cause any inconvenience or annoyance to the plaintiff Society. The defendant Association had never recommended their members to use the words "Incorporated Accountants" only without the addition of the words "London Association." The members of the plaintiff Society had no exclusive right to use the words "Incorporated Accountants," and it was not known generally to designate only members of the plaintiff Society.

His Lordship: Is there evidence to show that any other people use the same words?

Mr. Terrell thought there was. The only professional designation generally recognised by the public to any extent was that of "Chartered Accountant," and the plaintiff Society had not the exclusive right to the use of the words, as there was a Scotch Society which was entitled to the same words. The memorandum of the plaintiff Society contained no statement that the members were entitled to use the words, and it was denied that the use of the words "Incorporated Accountant" was generally accepted as indicating members of the plaintiff Society.

His Lordship: You have said in general terms that the designation "Incorporated Accountant" is not confined to the plaintiffs. I am waiting for evidence to show that other people use it.

Mr. Terrell said he thought it was admitted that a good many members of the plaintiff Society did not use the words "Incorporated Accountant." Reading further affidavits, counsel said Mr. Priddle, a member of the Civil Service and of the Chartered Institute of Secretaries, said he was President of the Council of the defendant Association. There was no justification for the allegation that it was formed for the purpose of conferring on its members or enabling them to use the description "Incorporated Accountant." There had never been the slightest desire on the part of the Association or its Council to induce the public to believe that members of it were members of the plaintiff Society, or to cause any confusion in the matter.

Mr. Tiddeman, solicitor to the defendant Association, said he had ascertained from inquiries that many members of the plaintiff Society did not describe themselves in their business as Incorporated Accountants.

Mr. Hawley, J.P., a retired bank manager,\* with fifty years' city experience, said he was satisfied that among business men the term "Incorporated Accountant" was unknown, and did not imply a member of any particular Association.

Mr. George Alfred Goodway said he had been a public accountant in Birmingham and Handsworth for seven years. It was altogether untrue, as suggested, that the title "Incorporated Accountant" was well known as meaning a member of the plaintiff Society. It indicated only what it meant, and he had used it in entire good faith, and not for the purpose of misleading anyone. Many members of the plaintiff Society in Birmingham did not use the description. The use of the term was important to him, having regard to the provisions of the Revenue Act, 1903 (as mentioned by Mr. Rowden). The business of debt collecting was a small part of his business, and members of the plaintiff Society also did the same business.

His Lordship said: Having regard to the fact that this was an interlocutory application, where was the evidence that the term carried with it to the public the meaning that the person using it was a member of the plaintiff Society? He did not say they would not prove it at the trial.

Mr. Rowden said the evidence showed that a large number of the plaintiffs' members had called themselves Incorporated Accountants; not all of them, but there were 2,000 members, and they could not all give evidence. There was also the fact that there was no other Society until the defendants started.

His Lordship: But that is not enough.

Mr. Rowden said plaintiffs had always acted on the footing that they could stop anyone else from using the name. They proved actual user by a large number of their own members, and said that nobody else had used it. When anyone else had called themselves an Incorporated Accountant plaintiffs had always stopped it.

Mr. Terrell: That is no evidence. You have objected, and they have acquiesced in your objection; that is all.

Mr. Rowden agreed that he had to show a *prima facie* case on an interlocutory application.

His Lordship: Strictly speaking, such evidence as there is of reputation is against you. Defendants state as a fact that the name is not known to the public. It is a serious thing to stop anyone's business unless the evidence is pretty clear.

Mr. Rowden submitted there was enough evidence to succeed on an interlocutory application.

#### JUDGMENT.

His Lordship, in giving judgment, said the evidence for the plaintiff Society in this case was defective in this respect: That its members had only generally and not universally used the name "Incorporated Accountant" in connection with their business. They had also proved that until recently there had been no other Society, the members of which had used that title. But they had failed to prove—and as far as there was any evidence at all it was the other way—that use by them of that name, and the absence of the use of that name by other persons, had caused it to acquire that reputation with the public which was essential in order that plaintiffs should maintain the action. He thought it was better that he should say no more about the merits of the case. All he said now was that for the purpose of an interlocutory application the evidence was not sufficient. He must therefore refuse the motion with the usual result, the defendants' costs of the motion to be defendants' costs in the action.

## LORD MAYOR'S COURT.

March 13.

(Before Mr. BOSANQUET, K.C., Common Serjeant, and  
a Jury.)

**Camm, Corbridge & Metcalf v. Goffin.**

*Accountancy Charges—Personal Liability of Director of  
Company.*

Messrs. Camm, Corbridge & Metcalf, Chartered Accountants, of Coleman Street, sued Mr. C. Goffin for accountancy work done at the request of the defendant for William Poole & Co., Lim., of Norwood. Mr. Lewis Thomas (instructed by Mr. Williams) was counsel for the plaintiffs, and the defendant conducted his case in person. For the plaintiffs Mr. Corbridge said his firm had done work for the company, and there was a balance of £31 10s. due. In October 1903 the defendant requested the plaintiffs to post up the books, and the work was done on the defendant promising payment, and saying he would get a guarantee for the balance then owing. The company had since gone into liquidation, and the defendant was the receiver. The defence was that the work was ordered to be done by the defendant as the chairman of the company. Therefore he was not personally liable. The jury returned a verdict for the defendant.

(City Press.)

## LORD MAYOR'S COURT.

March 15.

(Before Mr. BOSANQUET, K.C., Common Serjeant, and a  
Common Jury.)

**Dalgleish v. Meadowcroft.**

*Accountant and Client—Claim for Return of Books—Alleged  
Lien.*

Mr. W. H. Dalgleish, manufacturer of toilet requisites, of Soho Square, sued Mr. J. S. Meadowcroft, accountant, of Moorgate Street, to recover possession of certain books, and for damages for injury done to him in his business by reason of the detention. The defendant alleged that he had a lien upon the books for charges for work done.

It seemed that the plaintiff applied to the defendant for financial assistance for business development. In order that inquiries might be made, certain books were left with the defendant. Subsequently the defendant said he could not finance the plaintiff. That gentleman then applied for the return of his books, and was told that they would be returned upon certain charges being paid. Those charges the plaintiff declined to pay. The defence was that clerks' time was expended upon the examination, and charges were incurred.

The jury found a verdict for the plaintiff for the return of the books, and £10 as damages.

(City Press.)

**Bankruptcies and Insolvencies.**

## LORD MAYOR'S COURT.

February 16.

(Before Mr. F. S. JACKSON, Assistant Judge, sitting  
without a Jury.)

**Tomlin & Co. v. Woodley.**

*Deed of Arrangement—Dissentient Creditor—Liability of  
Trustee.*

Mr. Tomlin, trading as Tomlin & Co., forage merchants, sued Mr. J. R. Woodley, an accountant, for £10 16s. 9d., money received on plaintiff's behalf. It appeared that the defendant had had dealings with one Ewin, who in 1904 got into financial difficulties and entered into a deed of assignment. The defendant was the trustee under the deed. The business was sold to one Dean for a sum calculated to pay the creditors 15s. in the pound. The plaintiff and Mr. Ewin had cross transactions, and the former did not enter into the deed. The sum agreed as being due to the plaintiff was £14 9s., and at 15s. in the pound that represented £10 16s. 9d. As a result of correspondence and interviews, the plaintiff's solicitors suggested, from the information given by the defendant, that the plaintiff should join in the deed, and accept 12s. 6d. in the pound. The plaintiff, however, learned that Mr. Dean had forwarded to the defendant a cheque in payment of the sum due. The plaintiff's solicitors thereupon wrote demanding payment. The defendant, in answer, said that the cheque was received by him as part of the purchase-money, and must go to the credit of the estate. Mr. Dean, called for the plaintiff, said he marked the cheque "Re J. Tomlin." Mr. J. R. Woodley said that the total money due to the estate was not received until December, and the money in hand could not be distributed until after the settlement of the action. The sum of 7s. 6d. in the pound due to the plaintiff had been paid into Court. Since then the full balance of £3 12s. 3d. had been paid into Court, making a total of £9 0s. 8d. The dispute was over £1 16s. 1d. The plaintiff could not be put on a different footing from the other creditors, and the solicitors had given what was considered to be an assent to come in under the deed.

The Assistant Judge found a verdict for the plaintiff.

(City Press.)

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## Law Reports.

### Administrations.

#### CHANCERY DIVISION.

March 16.

(Before SWINFEN-EADY, J.)

*In re Sharp; Ricketts v. Ricketts.*

*Will—Annuity—Income Tax—Deduction—Liability—Trustee Act, 1888 (51 & 52 Vict. c. 52), s. 8.*

This was an originating summons to determine whether certain trustees had been right in paying, and would be right in continuing to pay, the annuities bequeathed by the testator without deducting income-tax; and, if not, whether they had rendered themselves liable to refund to the estate the sums overpaid to the annuitants through non-deduction of the tax. The testator died in 1877, having by his will bequeathed the residue of his estate to trustees on trust for sale, conversion, and investment, and out of the income to pay annuities to his widow, three daughters, and a daughter-in-law, and to accumulate the surplus for 21 years from his death, the accumulations to be added to the capital, but with power to resort thereto in any year when the income should be insufficient for payment of the annuities. The capital was to be divided after the death of the last annuitant among the testator's grandchildren, as was also the surplus income after the expiry of the period of accumulation. One of the annuitants (the widow) was a trustee named in the will. She died in 1882, when Sarah Sharp, one of the daughters (also an annuitant), was appointed in her place. Sarah died in 1901, and a third annuitant was also dead. The income-tax on the whole income of the trust fund was always abated before the income came to the hands of the trustees, and they had been accustomed ever since the testator's death to pay or retain the several annuities in full without making any deduction of tax as against the annuitants. Two new trustees had of late years been appointed, and they took out this summons against William Richard Rickett, the only original continuing trustee, who also represented the estate of the widow, and was one of the executors of Sarah, and against Sarah's other executors.

The following authorities were cited:—*Abadam v. Abadam* (33 Beav. 475, 478), *Warren v. Warren* (11 *The Times* L.R. 355; 43 W.R. 490; 72 L.T. 628), *Clerical, &c., Assurance Society v. Carter* (4 *The Times* L.R. 690; 21 Q.B.D. 339, 347), *In re Horne*; *Wilson v. Cox-Sinclair* (1905, 1 Ch. 76); Income Tax Acts, 1842, section 102; and 1853, section 40; Revenue (No. 1) Act, 1864, section 15; and Trustee Act, 1888, section 8.

#### JUDGMENT.

Mr. Justice Swinfen-Eady, in giving judgment, said it was clear the tax ought to have been deducted and must be deducted in respect of future payments, there being nothing in the will to exempt the annuitants from bearing it. As to the

liability of the trustees, there had been a breach of trust in regard to such part of the payments made as represented the tax. But it was an innocent breach, and, so far as it occurred more than six years ago, was barred by the Trustee Act, 1888, and the Statute of Limitations, except where a trustee, being also an annuitant, had not paid but retained the excess. All excess so retained, and all excess paid within six years, must consequently be refunded by the trustees so paying or retaining or the estates of such as were dead.

(22 *Times Law Reports*, 368.)

#### CHANCERY DIVISION.

January 11 1905.

(Before KEKEWICH, J.)

*Re Francis; Barrett v. Fisher.*

*Will—Directors' Fees—Capital or Income—Trustees for Life-Tenant and Remainderman.*

Adjourned summons. The question raised by the trustees of the will of Samuel William Francis, deceased, the testator, was whether remuneration received by them as directors of a limited company was to be accounted for by them and treated as income or as capital, as being an accretion to capital of the shares belonging to the trust estate. The summons originally came before the Court on the 1st December 1904, upon the point whether the applicants were entitled to retain the remuneration paid to them as directors, when his Lordship decided that it belonged to the trust estate, and the summons, being amended so as to raise the present point, was ordered to go into the retained list.

On December 30th 1899 a company was registered under the provisions of the Companies Acts, 1862 to 1898, in the name of "S. W. Francis and Co., Lim.," for the purpose of taking over the business assets and liabilities of a revolving-shutter maker, which had been carried on for many years by the testator, Samuel W. Francis, in Gray's Inn Road, London.

The capital of the company was £60,000, divided into preference and ordinary shares.

By clause 75 of the company's articles of association it was provided that the testator should be the governing director of the company until he resigned the office of director or died, and whilst he retained that office should exercise all powers vested in the board. Under clause 78, if the testator died whilst he held the office of governing director, he might by his will or any codicil thereto appoint any person to be governing director in his place.

By clause 80:—"When the said Samuel W. Francis " ceases to be governing director, the company in general " meeting may, but without prejudice to article 78, appoint " any persons to be directors of the company, and may fix " and determine the maximum and minimum number of



"directors, and the amount of their remuneration and  
 "qualification, and a general meeting shall forthwith be  
 "convened for the purpose. . . . The executors or  
 "administrators of a deceased holder of shares shall, for  
 "the purposes of this clause, be deemed to be holders of  
 "any shares standing in the name of the deceased."

In consideration of his transfer to the company, the testator had allotted to him the whole of the preference and ordinary shares, with the exception of seven preference shares, and the same were standing in his name at the date of his death on the 12th April 1904. The applicant trustees having by the summons, as issued, asked that they might retain for their own use and benefit the remuneration received by them from time to time as directors of S. W. Francis and Co., Lim., and the Court having expressed an opinion unfavourable to the granting of their application, the summons was amended raising the present point.

The applicants, who were engaged in business on their own account, had, especially Joseph F. Lake, since testator's death, devoted considerable time and attention to the company's business.

T. Tindal Methold, for the infant children entitled in remainder: The question in this case is whether the trustees' remuneration is a casual profit. No case absolutely in point can be found. But *Noble v. Cass* (2 Sim, 343) cited in "Gover on Capital and Income," p. 4, supplies the correct principle. Where, as there, damages for breach of contract are recovered by the life-tenant, the amount ought to go to him; if for an owner in fee, the amount ought to be settled. He also referred to *Cowley (Earl) v. Wellesley (Marquis)* (14 L.T. Rep. 245; L.R. 1 Eq. 656; 35 Beav. 635).

D. Stewart-Smith, K.C., and C. Johnston Edwards, for the life-tenants: It is not unimportant to ascertain from whom the remuneration comes. It is paid out of the company's income to which, as it accrues, the life-tenants are entitled. The income of the shares is diminished by the directors' fees, and it is only fair that, when the amount paid gets to the trustees, they should hold it for the life-tenants. The action of the company determines whether the amount is capital or income. (*Bouch v. Sproule*, 57 L.T. Rep. 345; L.R. 12 App. Cas. 385.)

#### JUDGMENT.

Kekewich, J.: This is a new point, and, to my mind, is not quite free from difficulty. The trustees hold a large number of shares, which are part of the estate which are settled. The trustees hold these, which are their qualifying shares, and are elected directors of the company, and as directors they receive a certain remuneration. They are accountable for that to the estate, there being no provision in the will which enables them to make a profit for themselves, and the Court, not having been asked to accede to trustees being directors, therefore they are accountable.

But are they to account for the amount received as capital or income? It seems to me that *prima facie* it must be capital unless you can say that it is part of the rents and profits, or, we will say, income, in some way. Now, counsel for the remainderman has pointed out the simple case of a manor being devised to trustees who receive fines and heriots. They do not belong to the tenant-for-life because they are casual profits, but because they are rents and profits. The heriot or fine is irregular and uncertain, but still it is a profit which may be regarded as being annexed to the manor. Although they are not reserved in any deed, still they are part of the income rents and profits of the manor. But how can you say that these moneys which are paid to the trustees are in any sense rents and profits? They are a payment made to the trustees for their services. It is nothing to do with the income of the estate. It is paid annually. It might be paid half-yearly or quarterly. It might be paid at other intervals. There is no income in it. The character of the money is that of a remuneration to them for their services. It might be paid as a lump sum. I think this case of *Noble v. Cass* (*ubi sup.*) illustrates this principle. The devise there stated was a devise of freeholds to trustees during the life of testatrix's niece, Ann Noble, upon trust to pay her the rents and profits thereof during her life for her separate use. During her life they recovered damages for breach of covenant in a lease granted by the testatrix and still subsisting, and it was held that they were trustees of the amount recovered by her. There was no duty to the remainderman. The uses to the remainderman were legal uses. That illustrates the principle that what trustees receive belongs to the estate of which they are trustees. I do not see any ground for saying that it belongs to the tenant-for-life because it is paid half-yearly or quarterly. This capital goes as an accretion to the shares.

(92 L.T. 77.)

## Bankruptcies and Insolvencies.

### PLYMOUTH BANKRUPTCY COURT.

March 21.

(Before His Honour Judge LUSH-WILSON).

*In re Frederick Waterman; ex parte J. Cran & Co.*  
*Bankruptcy of Contractor — Position of Sub-Contractor—*  
*Admiralty Contracts.*

The motion was that it might be declared that Henry Davey, of Bedford House, Bedford Street, Plymouth, the trustee in the bankruptcy, is trustee of the sum of £920 (the real figures were £904 gs. 6d.) received by him from the Lords Commissioners of the Admiralty in part payment of the contract price for certain machinery supplied and work done by the applicants (Messrs. J. Cran & Co.); and that £120, when received by the trustee in bankruptcy from the Lords Commissioners in further payment of the contract price for machinery and work done by the applicant will be

received as trustee, and will be the property of the above-named applicant. Further clauses in the motion were to the effect that the moneys were applicant's, and that the trustee in bankruptcy be restrained by injunction from parting with either sum save by paying the same to the applicant; that the time be extended for the applicant to lodge a proof in respect of the indebtedness of the bankrupt to the applicant (in case the Court held that applicant be not entitled to the other relief sought) until fourteen days after the hearing of the motion; that such further relief be given that may seem to the Court fit; and that the trustee in bankruptcy be ordered to pay to the applicant the costs of and incidental to the application.

On an interlocutory application an injunction pending the result of the motion had been granted.

Mr. Romer Macklin explained that Messrs. Cran & Co. were very well known builders of engines at Leith, and for many years had been contractors to the Admiralty. Messrs. Waterman Bros., the trade name by which the bankrupt carried on his business, was a maker of hulls for boats, and also Admiralty contractor. He was not on the Admiralty list for the supply of machinery, however. Before the contract over which the question at issue had arisen there had been dealings between Messrs. Waterman Bros. and Messrs. Cran & Co., and he would quote from correspondence dated 1898 to show the manner in which they carried through those dealings. The point in the case was whether in law or equity the instalments which, in accordance with practice, were paid by the Admiralty to Messrs. Waterman were not the property of Messrs. Cran & Co.—in other words, whether Messrs. Waterman, when the instalments were received, did not become trustee for Messrs. Cran's proportion—that for the machinery which was supplied. As between the Admiralty and Messrs. Waterman there was no doubt Messrs. Waterman were the principal contractors, yet he claimed that as to the machinery they were trustees for Messrs. Cran. That view was largely borne out by statements in correspondence between the parties, copies of which—a formidable bundle—were handed in.

Mr. Dalling, for the representatives of the Admiralty (Messrs. Venning, Goldsmith & Peck), produced all the original documents relating to the contracts. The contract on which the payments now involved were made, or to be made, was entered into at the end of the year 1903. Messrs. Cran in one letter wrote that they would esteem it a favour "if you can let us have our proportion," &c., while on August 8th 1903 a letter was sent by the Admiralty to Messrs. Cran informing them that tenders were being invited for four 52½ ft. launches, and stating that the name of their firm had been mentioned by boat builders as one from which the machinery for the launches might be obtained. He (counsel) claimed that there were distinct tenders, one for the hulls from Messrs. Waterman and one for the machinery

from Messrs. Cran, both of which went to the Admiralty with no power on the part of Messrs. Waterman to affect the price tendered by Messrs. Cran.

Another letter of importance was one written by Messrs. Waterman stating that they had received a communication from the Admiralty as to machinery for four boats, which contained the words "if you are desirous of co-operating with us for building the boats. Should you desire to tender, the machinery will have to be delivered at, and fitted on the boats at, our yard, under Admiralty supervision." That meant that Messrs. Waterman were simply the medium through which Messrs. Cran & Co. tendered to the Admiralty. On the 1st September 1903 Messrs. Waterman tendered for the launches, giving Messrs. Cran's figures and their own separately. On November 30th of the same year a document was sent to Messrs. Waterman by the Admiralty which was a conditional order for the work. Counsel emphatically claimed that there was never a machinery contract with Messrs. Waterman, and quoted a further letter from them to Messrs. Cran intimating the success of the tender, in which it was said, "We have been appointed conjointly with your esteemed firm." He took that to clearly show that Messrs. Cran's tender was sent to the Admiralty through Messrs. Waterman, and was accepted by the Admiralty. Messrs. Cran wrote thanking them for indicating "the acceptance by the Admiralty of our tender through you. We have much pleasure in confirming this, and also signifying our agreement" with the conditions. The instalments of payment for that machinery could not be dealt with by Messrs. Waterman except by cashing the cheque and sending on the proceeds to Messrs. Cran, to whom the money was rightly due. The instalments concerned with the motion were ear-marked for machinery, and the items relating to the hulls and to the machinery were kept separate in every way, while he believed they were entered separately in the bankrupt's books (Messrs. Waterman's). When Messrs. Cran wrote to Messrs. Waterman for some of the money which the Admiralty should have paid, seeing how much work had been done, a reply was sent in which were the words, "I hope you do not mean to imply that we have been making use of your portion of the instalments. Our experience is that at times payments are made promptly, but at others not so promptly." In the face of all the facts he had disclosed it would, contended Mr. Macklin, be idle for the other side to deny that in equity the moneys did belong to the applicant. All the work, as far as the machinery was concerned, was completed by the end of May 1905. On the 1st of June last year the act of bankruptcy was reported by Messrs. Bond & Pearce to Messrs. Cran, who on the following day wrote the Admiralty for payment for their work, receiving a reply that payment would be made to Messrs. Waterman direct. By June 24th the boats were completed, and the work done to complete them only cost £60.

No witnesses were called to support the application, though Mr. Cran was in attendance, it being considered the documentary evidence was sufficient.

Mr. Hawke, referring to the Admiralty view of the contract, said a number of letters showed what it really was. Mr. Cran wrote on several occasions to the Admiralty for payment, after the bankruptcy was disclosed, and on October 25th 1905 the Admiralty officials wrote:—"In reply 'to your letter of the 2nd of June last, addressed to the 'Accountant-General of the Navy, I am commanded by my 'Lords Commissioners of the Admiralty to inform you that 'they are advised that as the contract with the Admiralty 'for both the hulls and machinery of steam launches 'No. 133 and No. 135 is with Messrs. Waterman Bros. 'only, no payment in regard to those launches can be made 'direct to you.'" Mr. Cran wrote stating that that was not satisfactory to him, as he was tendering for other vessels in the same way, and asking what was his actual position in the matter. After that, having the Admiralty view of the matter, Messrs. Cran wrote to the trustee, Mr. Davey, on November 25th 1905:—"As no advice of any kind has ever 'reached us as to what has transpired in regard to Messrs. 'Waterman's bankruptcy, the probability of a dividend, 'and when it will be paid . . . we shall be glad to 'hear from you." He argued that the documents which formed the contract were the real matters on which a decision would have to be arrived at. There was nothing to take the case out of the category of cases of contractor and sub-contractor. He further contended that Messrs. Cran had no liability to the Admiralty, and submitted there was no contractual relation between Messrs. Cran and the Admiralty. In the contract terms it was laid down that there should be a guarantee of 10 per cent. of the full contract, and it would be absurd to suggest the contract or specification form which Messrs. Cran signed could bind them to guarantee 10 per cent. on the hulls of the launches. Messrs. Cran & Co. were purely sub-contractors, and looked in this case solely to the credit of Mr. Waterman. Reading the correspondence as a whole, it was thoroughly clear Mr. Cran thought when Mr. Waterman received instalments he would pay. What made the circumstances other than ordinary was that one of the contracting parties was the Admiralty, whose practice was clear. The Admiralty required to know who a sub-contractor was, and that such sub-contractor should enter into a contract in similar terms as the contractors, because it was more important to the Admiralty that they should get their work done than that they should have an action against their contractors. Messrs. Waterman were responsible for the whole of the work, and if the machinery did not come up to standard Messrs. Waterman would have had to put it right; further, they were responsible to the Admiralty for the condition and maintenance of the launches for twelve months after delivery.

The intention of clauses in the Admiralty forms for contractors and sub-contractors was discussed at much length by his Honour and Mr. Hawke, and the different positions which the circumstances in the case assumed in relation to them when looked at through various analogies. At its close his Honour said he was satisfied, looking at all the documents together, that Messrs. Cran were perfectly content to treat the Admiralty as the people who were to pay, in the sense that they never looked to Messrs. Waterman for the price of the work done under the terms of the contract if the Admiralty failed to pay.

Mr. Hawke then contended that Messrs. Cran were in the position of creditors, and not as persons for whom money was held in trust.

#### JUDGMENT.

His Honour said he held, the Admiralty being solvent beyond suspicion, that Messrs. Cran were perfectly content to rely on the promise of the Admiralty for payment, and therefore there was never a promise by Messrs. Waterman to pay Messrs. Cran themselves. In that respect it was never a position as between contractor and sub-contractor, because it lacked one essential—an obligation to pay under any circumstances. The two words used by Messrs. Waterman in the correspondence with Messrs. Cran—"co-operate" and "conjointly"—were absolutely unusual expressions to find in use as between contractor and sub-contractor.

After reviewing the arguments on either side, his Honour gave judgment for the applicants with the amended figure of £904 9s. 6d. in the early part of the motion. He also granted Mr. Hawke a three weeks' stay of execution, in order that the question of appeal in the Divisional Courts might be considered.

(*Western Daily Mercury*.)

## Miscellaneous.

### HOUSE OF LORDS.

March 20.

(Before Lord LOREBURN, L.C., Lords MACNAGHTEN, DAVEY, ROBERTSON, and ATKINSON.)

#### **Williams and others v. North's Navigation Collieries (1889), Ltd.**

*Master and Servant—Wages—Payment in Current Coin—Fine Imposed on Workman—Deduction of Fine from Wages—Truck Act, 1831 (1 & 2 Will. IV. c. 37), s. 3.*

The deduction by an employer from the wages of a workman of the amount of a fine imposed for breach of his contract upon a workman is a violation of Section 3 of the Truck Act, 1831, which requires the entire amount of wages to be paid in current coin of the realm.

#### JUDGMENT.

Their Lordships, after consideration, reversed the decision of the Court of Appeal, 73 L.J. Rep. K.B. 575; L.R. (1904) 2 K.B. 44.

## Law Reports.

### Company Law.

#### COURT OF APPEAL.

March 22.

(Before COLLINS, M.R., and COZENS-HARDY, L.J.)

#### Automatic Self-Cleansing Filter Syndicate Company, Lim. v. Cunningham.

*Company—Directors—Powers of Company—Sale of Company's Assets—Ordinary Resolution of Company—Refusal of Directors to comply with Resolution.*

This was an appeal from a decision of Mr. Justice Warrington. The question raised by the appeal was whether the shareholders of a company have power by a resolution passed by a simple majority to compel the directors in whom the management of the company is vested to carry out an agreement for the sale of the company's assets, notwithstanding that the directors are of opinion that the sale is improvident.

The plaintiff company was incorporated on June 10 1896. The objects of the company as stated in Clause 3 of its memorandum of association were (*inter alia*) (a) to acquire from James Wilson the benefit of certain existing inventions in relation to the filtration, treatment, purification, storage, application, distribution, and use of liquids; and (b) to sell the undertaking of the company, or any part thereof, for such consideration as the company might deem fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this company. The articles provided as follows:—"81. The company may by special resolution remove any director before the expiration of his period of office and appoint another qualified person in his stead. . . ." "96. The management of the business and the control of the company shall be vested in the directors, who, in addition to the powers and authorities by these presents expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the company, and are not hereby or by statute expressly directed or required to be exercised or done by the company in general meeting, but subject nevertheless to the provisions of the statutes and of these presents, and to such regulations, not being inconsistent with these presents, as may from time to time be made by extraordinary resolution, but no regulation shall invalidate any prior act of the directors which would have been valid if such regulation had not been made." "97. Without prejudice to the general powers conferred by the last preceding clause, and to the other

"powers and authorities conferred as aforesaid, it is hereby expressly declared that the directors shall be entrusted with the following powers—namely, power (1) (*inter alia*) to sell the lease, abandon or otherwise deal with any property, rights, or privileges to which the company may be entitled, on such terms and conditions as they may think fit." The plaintiff McDiarmid, who was the holder of 1,202 shares in the plaintiff company out of a total issue of 2,700 shares, being desirous that the assets and undertaking of the plaintiff company should be sold, arranged terms on behalf of the company for the sale of them to a new company formed for the purpose of acquiring them. He had these terms embodied in a contract, which was engrossed ready for execution by the company, and thereupon requisitioned the directors to call a meeting of the shareholders to deal with this matter. On January 2 1906 a meeting of the shareholders of the company convened by the directors in accordance with such requisition was held for the purpose of considering and, if thought fit, passing the following resolution:—"That the company do sell the assets specified in the contract which has been produced to the meeting at the price and on the terms therein mentioned and contained, and that the directors be and they are hereby directed to cause the common seal of the company to be affixed thereto within seven days, and to carry the same into effect." The meeting was adjourned until January 16, when the resolution was passed by a majority of 304 votes, 1,502 votes for and 1,198 against it. Practically the whole of the 1,502 votes were given in respect of shares held by the plaintiff McDiarmid or his friends. The directors, being of opinion that it would not be in the interests of the plaintiff company that the contract should be carried out, declined to comply with the resolution. The plaintiff company and McDiarmid, suing on behalf of himself and all other shareholders in the company, moved that the directors might be ordered forthwith to affix the seal of the company to the contract and to carry it into effect, and that they might be restrained by injunction from disposing of the assets of the company intended to be comprised in the agreements in any manner inconsistent with the terms thereof. Mr. Justice Warrington refused the motion. The plaintiffs appealed.

#### JUDGMENT.

The Master of the Rolls said that the point arose in this way. At a meeting of the company a resolution was passed by a majority in favour of the sale of the assets of the company to a purchaser, and the directors, honestly believing that it was most undesirable that the contract for sale should be carried into effect, refused to affix the seal of the company to it or to assist in carrying out the resolution. The question was whether under the memorandum and articles of association the directors were bound to accept, in substitution of their own view, the

resolution of the company. Mr. Justice Warrington held that a majority of the shareholders could not impose that obligation upon the directors, and that upon the true construction of the articles the directors were the persons to determine whether this sale should be carried into effect, and that unless there was an extraordinary resolution it was impossible for the majority to override the views of the directors. His Lordship (the Master of the Rolls) referred to the clauses of the memorandum and articles set out in the statement, and continued:—The effect of the articles was that in respect of all matters specially referred to in Article 97 the view of the directors as to the fitness of what was proposed to be done was the sole standard. Furthermore, by Article 96 the directors were given all the powers of the company, except so far as those powers were expressly required to be exercised by the company itself in general meeting. Then came the limitation on their general powers and authorities "subject nevertheless to the provisions of the statutes and of these presents, and to such regulations, not being inconsistent with these presents, as may from time to time be made by extraordinary resolution." So that if it was desired to alter the powers of the directors, that must be done not by a simple resolution, but by an extraordinary resolution. In these circumstances, in his Lordship's opinion, it was not competent for an ordinary majority of shareholders in effect to alter the mandate originally given to the directors by the articles. It was said that this was a mere question of principal and agent, and that it was absurd that the agent should be in a position of dictator to the principal, but the analogy did not apply. In a sense no doubt directors were agents, but it was not fair to say that the majority was the principal. The minority had also to be taken into account. The mandate to the directors was the mandate of the entity made up of all the members, and if that mandate was to be altered, that, in his Lordship's opinion, could only be done by the machinery provided by the articles. This view was also confirmed by an argument used by Mr. Justice Warrington. It was to this effect. By the articles directors could only be removed by special resolution. But what was the use of that provision if you could practically override them? There would be no occasion to remove them if you could do without them. The only case which approached this at all was the *Isle of Wight Railway Company v. Tahourdin* (25 Ch.D. 320), but that turned upon a different statute—viz., the Companies Clauses Act, 1845, and a statute differing upon the most essential point in this case—viz., the limitation of the powers of the directors. The appeal failed.

Lord Justice Cozens-Hardy concurred. He thought it somewhat remarkable that in the year 1906 this interesting and important question should arise for the first time. It was therefore necessary to go back to the

right principle which governed these cases under the Companies Act, 1862. It was clearly established that the articles of association were a contract between the members *inter se*. It was therefore necessary to look at the articles to see what contract these shareholders had entered into. In his Lordship's opinion the shareholders had by express contract mutually agreed that their common affairs should be managed by certain directors appointed by the members in the mode provided by the articles, such directors to be removed only by special resolution. If you once got a stipulation of that kind by a contract made between the parties, what right was there, in the absence of fraud or misconduct, to interfere with the directors? So far from there being any analogy in favour of the appellants' view, the analogies were all the other way. Take the case of an ordinary partnership. If in an ordinary partnership there was a stipulation that the partnership should be managed by one of the partners, his Lordship took it to be plain that, in the absence of misconduct or of circumstances involving the dissolution of the partnership, the majority of the partners would have no power to interfere with his conduct of the business. It was a fallacy to say that that was a case of principal and agent in the ordinary sense, because the managing partner was managing for himself and the others. If you once got rid of the view that directors were mere agents, there was nothing to justify the view that directors were bound to comply with a resolution of a simple majority of shareholders at an ordinary meeting. It was not correct to say that directors were in the position of agents; it was more correct to say they were in the position of managing partners.

(22 *Times Law Reports*, 378.)

#### CHANCERY DIVISION.

March 26.

(Before WARRINGTON, J.)

*In re A. R. Dean, Lim.*

*Company—Winding-up—Contract to Sell Assets—Leaseholds—Omission to Assign—Dissolution of Company—Vesting Order—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (ii.) (c).*

Petition for vesting order under section 26 of the Trustee Act, 1893.

By an indenture of July 27 1896, A. R. Dean, Lim., demised to the old Midland Trust, Lim., Nos. 153, 155, and 157 Corporation Street, Birmingham, for the residue of a term of seventy-five years from September 29 1895, less the last day, by way of mortgage as security for the debenture-holders of A. R. Dean, Lim. Power of appointing new trustees was given to A. R. Dean, Lim.

In December 1896 the old Midland Trust, Lim., went into voluntary liquidation, and it was agreed that its property and undertaking should be transferred to the new Midland Trust, Lim., which had been formed for the purpose. The new Midland Trust, Lim., entered into possession under the agreement, but no assignment of the leaseholds was executed.

On the expiration of three months from June 4 1898 the old Midland Trust was automatically dissolved under section 143 of the Companies Act, 1862.

By an indenture of May 31 1899 between A. R. Dean, Lim., and the new Midland Trust, Lim., the new Midland Trust, Lim., was appointed trustee of the indenture of July 27 1896.

In April 1903 A. R. Dean, Lim., went into voluntary liquidation, and subsequently the liquidation was ordered to be continued under the supervision of the Court.

An agreement having been entered into for the sale of Nos. 153, 155, and 157 Corporation Street, the purchaser required that leasehold estate created by the sub-demise of July 27 1896 should be got in.

The new Midland Trust, Lim., and the liquidator in A. R. Dean, Lim., and A. R. Dean, Lim., accordingly presented this petition, asking that it might be ordered that the lands and premises in Corporation Street, which had been sub-demised by the indenture of July 27 1896, should vest in the new Midland Trust, Lim., for all the estate and interest which was vested in the old Midland Trust, Lim., immediately before its dissolution.

The Trustee Act, 1893, enacts: "In any of the following cases—namely, . . . (ii.) where a trustee entitled to "or possessed of any land . . . either solely or jointly "with any other person . . . (c) cannot be found ". . . the High Court may make an order . . . vesting the land in any such person . . . as the Court "may direct. . . ."

J. F. Waggett, for the petitioners, asked for the order and referred to the two decisions of Farwell, J., in *In re The General Accident Assurance Corporation, Lim.* (1903, 73 L.J. Rep. Ch. 84; L.R. (1904) 1 Ch. 147), and *In re Richard Mills & Co. (Brierly Hill), Lim.; Smith v. The Company* (1905, 40 L.J.N.C. 177; Weekly Notes (1905), p. 36; conflicting with the decision of Buckley, J., in *In re Taylor's Agreement Trusts* (1904, 73 L.J. Rep. Ch. 557; L.R. (1904) 2 Ch. 737). He also referred to the decision of Warrington, J., in *In re No. 9 Bomore Road* (1906, 75 L.J. Rep. Ch. 157; L.R. (1906) 1 Ch. 359).

#### JUDGMENT.

Warrington, J., said he would follow the two decisions of Mr. Justice Farwell in *In re The General Accident*

*Assurance Corporation, Lim., and In re Richard Mills & Co. (Brierly Hill), Lim.; Smith v. The Company*, and would make the vesting order on the ground that the trustee "cannot be found."

(L.J. 209.)

### Miscellaneous.

#### COURT OF APPEAL.

March 23 and 26.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

#### Bonnard v. Dott.

*Money-lending—Unregistered Person—"Harsh and unconscionable" Bargain—Shares in Companies—Transactions Reopened—Illegal Contract—The Moneylenders Act, 1900 (63 & 64 Vict. c. 51), s. 1, subsec. 1; s. 2, subsec. 1 (a); s. 6 (d).*

Appeal from decision of Kekewich, J. (noted 40 L.J. N.C. 403; (1905) W.N. 84).

The action was by an undischarged bankrupt, seeking to reopen certain money-lending transactions with the defendant on the ground that they were "harsh and unconscionable" within the meaning of the Money-lenders Act, 1900.

In 1901 and subsequent years the plaintiff, who was a company promoter, borrowed numerous sums of money for his own purposes from the defendant, giving him promissory notes and bills of exchange, which were renewed from time to time. The total amount borrowed was £940, and in consideration for the loans and renewals certain shares in two companies were given by the plaintiff to the defendant as bonuses, and also an undertaking to deliver 4,800 shares in a third company. The present value of the various shares was stated to be about £5,000, but the defendant alleged that at the time when the bonuses were given the shares were practically valueless. The plaintiff had not repaid any of the money borrowed, and he now claimed a return of the shares and the undertaking upon his submitting to repay whatever sums should be adjudged by the Court to be fairly due to the defendant. The defendant, who was not registered as a money-lender under the Act, denied that he was carrying on the business of money-lending or that the bargains were harsh and unconscionable, and he counterclaimed for specific performance of the undertaking to deliver the 4,800 shares. In reply it was pleaded that the transactions were wholly illegal and void on the ground that the defendant was not registered under the Act. It appeared that the defendant was

colliery proprietor, a director of public companies, and a speculator in mining shares; and he asserted that it was in the course of this last business that he from time to time lent money. Evidence was given of numerous loans to various persons connected with the promotion of companies.

Kekewich, J., held that the defendant was a money-lender within the meaning of the Money-lenders Act, 1900, and that the bargains were "harsh and unconscionable." The plaintiff was therefore entitled to reopen the transactions upon the terms of repaying to the defendant the whole of the amount actually advanced by him with interest at 20 per cent. He dismissed the defendant's counterclaim.

The defendant appealed.

#### JUDGMENT.

Their Lordships held that the defendant being an unregistered money-lender was incapacitated from enforcing his bargain, and the transaction was wholly void. They agreed on this point with the decision of Mr. Justice Buckley in *The Victorian Daylesford Syndicate v. Dott* (1905, 74 L.J. Rep. Ch. 120; L.R. (1905) 2 Ch. 624). The plaintiff would therefore have had a right to relief even beyond that which was given him by Mr. Justice Kekewich, if he had insisted upon it. The appeal failed on account of the defendant's incapacity, and it was unnecessary to go into any other questions.

Appeal dismissed.

(L.J. 208.)

#### CHANCERY DIVISION.

March 7.

(Before WARRINGTON, J.)

#### Dawson v. Isle.

*Bill of Exchange—Bill Receivable—Whether a "Book Debt"—Handed to Banker to be Discounted—Whether Property of Customer or Banker till Discounted.*

Special case stated by referee in the action for the opinion of the Court.

By an agreement in writing dated February 27 1905 the plaintiff agreed to sell to the defendant shares in a company at a price to be arrived at by taking into account

"the amount of the book debts due to the company (less the discount), such debts to be taken as good at the amounts standing in the company's books."

The plaintiff sought to include as a book debt due to the company a bill of exchange for £600. The referee in the special case stated that the company had received the bill from one of their customers in the ordinary course of trade, and had on February 22 1905 handed it to their bankers for the purpose of being discounted; that it was properly accounted for in the company's books on February 27; and that on that day the bankers discounted it, and on the 28th credited the company with the amount of the bill, and debited them with the discounting charges.

The question for the decision of the Court was whether the bill was to be treated as a "book debt due to the company."

#### JUDGMENT.

Warrington, J., said the bill would stand in the company's Ledger and be credited to the account of the customer, and would also appear in the Bills Receivable Book. Upon the authority, therefore, of *In re Stevens; Stevens v. Keily* (W.N. 1888, p. 110 [see correction on p. 116]), it was a book debt. But what was the position until it was discounted? Was it a debt due to the company or to the bank in the meantime? His Lordship's view was that the case was covered by *Giles v. Perkins* (1807, 9 East, 12), and that the bill (which he would assume had been indorsed for the purpose of being discounted, though it was not stated that it had been) was handed to the bank conditionally, and remained the property of the company till the condition was fulfilled. That being so, the plaintiff was right, and the bill must be taken into account in estimating the amount of the purchase-price. It was contended that that decision would be in the teeth of *Ex parte Scholfield; in re Frith* (1879, 48 L.J. Rep. Bank. 122; L.R. 12 Ch.D. 337). The defendant maintained that that case decided that by indorsement the bill became the property of the bank. But if that case were examined it would be found that that was not the question which was considered there at all; but the question there was whether certain bills had been handed to the bank as security or not, so as in the bankruptcy of the customer to be regarded as bills held by the bank. The whole point there was that the bills were indorsed for the purpose not of collection, but of being held as against advances. That case was, therefore, distinguishable from *Giles v. Perkins* and the present case.

## Law Reports.

### Bankruptcies and Insolvencies.

#### KING'S BENCH DIVISION.

April 2.

(Before BIGHAM and WALTON, JJ.)

*Re Mellison; ex parte Day.*

*Bankruptcy—Practice—Disclaimer—Administration of Estate of Deceased Insolvent—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55; s. 125, subsecs. 5 & 6.*

Appeal by an under-lessee from a deceased person whose estate was being administered under the provisions of section 125 of the Bankruptcy Act, 1883, against an order made by the Registrar of the County Court at Brighton, giving the trustee in the administration leave to disclaim a lease from one Isaacs to the deceased. It was contended on behalf of the appellant that section 55 of the Bankruptcy Act, 1883, which deals with disclaimer, was not applicable to administrations under section 125. By sub-section 6 of section 125, Part III. of the Bankruptcy Act, 1883, which includes section 55, is imported into administrations under section 125 as far as it is applicable. It has, however, been held that administrations under section 125 of the Bankruptcy Act, 1883, should be conducted as far as possible in the same way as administrations in the Chancery Division: *Re Crowther; ex parte Ellis* (36 W.R. 189, 20 Q.B.D. 30). Disclaimer does not exist in administrations in Chancery, and it was therefore contended that it should not apply to administrations under section 125.

#### JUDGMENT.

The Court dismissed the appeal and held that a trustee in an administration has the same right to disclaim onerous property as the trustees in an ordinary bankruptcy. The Court further expressed its approval of the *obiter dictum* of Cave, J., to the same effect in *Re Gould; ex parte the Official Receiver* (35 W.R. 569, 19 Q.B.D. 92). Leave to appeal was granted.

(50 S.J. 378.)

### Company Law.

#### CHANCERY DIVISION.

March 27.

(Before WARRINGTON, J.)

*Fuller v. White Feather Reward, Lim.*

*Company—Reconstruction—Ultra vires—Sale for partly-paid Shares in view of Winding up—Vendor Company or its Nominees to apply for the Shares—Distribution among Shareholders—Sale of Dissident Shareholder's Shares.*

This was a case of considerable interest as to the law relating to the reconstruction of companies, it being said

that, if the plaintiff's claim were allowed and it were held that what the defendant company were doing in the present instance was illegal, there could never, practically, be a reconstruction again.

On March 13 the plaintiff, who held fully-paid shares in the defendant company, commenced this action, claiming, first, a declaration that an agreement dated January 22 1906, made between the defendant company and the White Feather Main Reefs (1906), Lim., and the distribution of shares in the last-named company, part of the purchase consideration in accordance with the agreement or in accordance with certain resolutions of January 31, were *ultra vires* the defendant company; and, secondly, an injunction to restrain the defendants from carrying out the agreement and from foregoing any of the shares in the purchasing company according to the provisions of the agreement, or from disposing of any of the unclaimed shares in manner provided for by the fourth resolution passed on January 31 1906, or otherwise from dealing with any of the shares in the White Feather Main Reefs (1906), Lim., part of the consideration for the acquisition of the defendant company's assets by the last-mentioned company otherwise than in accordance with the rights of the members of the defendant company. The present application was a motion that the defendants might be restrained, until trial of the action or further order, from carrying into effect the agreement; or, in the alternative, from distributing 140,000 shares of 5s. each with 3s. 6d. paid in the capital of the White Feather Main Reefs (1906), Lim., in accordance with the provisions of that agreement, or from selling any of the shares not applied for by members of the defendant company in manner provided for by resolution 4 of the resolutions, or from disposing of the shares or any of them otherwise than in accordance with the rights of the members of the defendant company. The company the White Feather Reward, Lim., was incorporated in 1900 under the Companies Acts, with a capital of £140,000 divided into 140,000 shares of £1 each, all of which were issued and at the time of the transactions now in question were fully paid up. The memorandum of association contained, among the objects for which the company was established, the following:—"(*w*) To sell, "lease, exchange, surrender, improve, manage, develop, "mortgage, dispose of, turn to account, or otherwise deal "with the undertaking and property and rights of the com- "pany or any part thereof, for such consideration as the "company may think fit, and in particular for any shares, "fully or partly paid up, debentures fully or partly "paid up, or securities fully or partly paid up, "or property of any other company, and to divide "such part or parts, as may be determined by "the company, of the purchase-money, whether in "cash, shares, or other equivalent, which may at any



"time be received by the company on a sale of, or other dealing with, the whole or part of the property, estate, effects, and rights of the company amongst the members of the company, by way of dividend or bonus in proportion to their shares, or to the amount paid up on their shares, or otherwise to deal with the same, as the company may determine. And the powers contained in this and the preceding sub-section (v) shall be exercisable, whether in view of a winding-up of the company or not."

"(x) To distribute any of the assets of the company among the members in specie, or otherwise, but so that no distribution amounting to a reduction of capital be made without the sanction of the Court where necessary."

Article 179 of the articles of association was as follows:—

"The liquidator, on any winding-up (whether voluntary, under supervision, or compulsory) may, with the sanction of an extraordinary resolution, divide among the contributories in specie the whole or any part of the assets of the company, and may, with the like sanction, vest the whole or any part of the assets of the company in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit." By an agreement made January 22 1906 between White Feather Reward, Lim. (the vendor company), and White Feather Main Reefs (1906), Lim. (the purchasing company), it was agreed:—(1) That the vendor company should sell, and the purchasing company should purchase, all the undertaking, business, lands, mines, mineral rights, and other property and effects of the vendor company; (2) as part of the consideration the purchasing company should satisfy and discharge the existing debts, liabilities, and obligations of the vendor company; (3) as further consideration the purchasing company should, if the vendor company within six months passed an effective resolution for a voluntary winding-up, pay all the costs of the winding-up; (4) as further consideration the purchasing company should allot to the vendor company, or at the vendor's option to its nominees, 140,000 shares of 5s. each in the capital of the purchasing company credited with 3s. 6d. per share as paid up thereon; (5) the vendor company should apply and find substantial nominees who would within two months after the date thereof, or within such extended time as might be agreed between the parties thereto, apply for and accept an allotment of the shares, and pay 6d. per share on application, and agree to pay 6d. per share on April 30 and the remaining 6d. per share on June 30; (6) in the event of the vendor company failing to comply with the conditions of the last preceding clause with regard to any of such shares so to be applied for (for which purpose time should be of the essence of the contract), the shares unapplied for by the vendor company, or in respect of which substantial nominees should not have been found who should have applied for and accepted an

allotment as aforesaid, should be at the disposal of the purchasing company, and the vendor company should not be under any liability to become a member of the purchasing company in respect of any of the said shares. Contemporaneously with the agreement the directors issued a report stating that negotiations had been for some time going on and had resulted in an agreement for amalgamation with the White Feather Main Reefs, Lim., and that, in order to provide funds for further development, and with a view to economical working, it would be necessary to ask the shareholders to agree to an assessment of 1s. 6d. on both companies' shares, and that it was now proposed to register a new company with a capital of £75,000 in 300,000 5s. shares (in place of £1 shares as at present), credited with 3s. 6d. paid, of which 140,000 were allocated for shareholders in White Feather Reward, Lim., and 160,000 for shareholders in White Feather Main Reefs, Lim., those figures representing the number of shares issued in both companies. At the same time with the report, the directors gave notice that a meeting of the company would be held on January 31, at which the meeting would be asked to consider an amalgamation scheme and, if thought fit, to pass certain resolutions. The resolutions were as follows:—(1) "That the amalgamation scheme submitted to this meeting be and the same is hereby approved"; (2) "That it is desirable to wind up this company, and accordingly that the White Feather Reward, Lim., be wound up voluntarily"; (3) "that the liquidator of the company be and is hereby, as and from the date of his appointment, authorised and required to offer the shares of the new company of 5s. each (credited with 3s. 6d. as paid up thereon) receivable under the agreement for sale referred to in the amalgamation scheme for distribution among the members of the company, at the rate of one of such new shares for each share in the existing company held by such members"; (4) "that in the event of any of the said members not accepting their due proportion of such shares within a time to be limited in such offer (not being less than 14 days) the liquidator be authorised and required to use his best endeavours to sell the shares not so accepted upon the best terms obtainable, and to hold the net proceeds of such sale upon trust to distribute the same among such members." The amalgamation scheme stated that:—(1) A new company called the White Feather Main Reefs (1906), Lim., had been formed and registered, and would have a capital of £75,000 divided into 300,000 shares of 5s. each; (2) the new company purchased from the present company and the White Feather Main Reefs, Lim., their respective undertakings and assets for a consideration consisting of—(a) 299,993 shares of 5s. each, of which 140,000 were allocated to the White Feather Reward, Lim., and 159,993 to the White Feather Main Reefs, Lim., the said

"shares were credited as being paid up to the extent of 3s. 6d. per share, and had a liability of 1s. 6d. per share, payable 6d. on application, 6d. on April 30 1906, and 6d. on June 30 1906; and (b) the payment and satisfaction of the debts and liabilities of the companies, including the cost of liquidation; (3) the present companies to go into voluntary liquidation, and the liquidator to offer the shares in the new company (credited with 3s. 6d. per share as paid up thereon), receivable as above, for distribution among the members of the respective companies, at the rate of one of such new shares for each share in the existing companies held by such members; (4) in the event of any of the said members not accepting their due proportion of such shares within a time to be limited in such offer (not being less than 14 days), the liquidator should use his best endeavours to sell the shares not so accepted upon the best terms obtainable, and should distribute the net proceeds of such sale among such members." It was admitted that section 161 of the Companies Act, 1862, did not apply in the present case, but it was contended for the defendants that the shareholders got under the proposed scheme all the rights they would have if it were a case under that section, that there was no inequality in the distribution of the shares, and that the whole transaction was perfectly legal.

## JUDGMENT.

Mr. Justice Warrington said that the case was one of considerable general importance, and he was extremely indebted to counsel for the assistance they had given the Court. The question, and the only question, which he had to decide was whether certain arrangements were wholly or in part *ultra vires* the defendant company. He desired to say at once that he had not to decide whether the arrangements were fair or unfair to shareholders in the defendant company, and he desired also to say that the Court was not in a position, or in possession of sufficient materials to say whether they were fair or not, and he expressly abstained from saying anything about that. The only question was whether the company were acting within their powers. His Lordship read the clauses (w) and (x) of the memorandum of association above set out, and the material parts of the agreement of January 22 1906, and the resolutions and the amalgamation scheme, and said that the plaintiff objected that the agreement and resolutions were *ultra vires*, and the question was whether he was right. Looking at the agreement itself, was it or was it not within the clauses of the memorandum of association? It was said not to be, and that the sale was not a sale within the memorandum. But the terms of the memorandum were in extremely wide terms, and provided that the company might sell for partly or fully paid-up shares. If there were no authority on the point, the fact that the sale was for partly-paid shares would not render it outside the memorandum. Nor, again, in the absence of authority, upon the facts which he had stated, was it any the less a sale within the memorandum because it was a sale in view of a winding-up. But on both points there was authority, which covered them. That the sale for unpaid shares,

though in view of a winding-up, in the absence of special provision, would not be otherwise than within the clause of the memorandum, was decided by Mr. Justice Buckley in *Mason v. Motor Traction Company, Lim.* (1905, 1 Ch. 419), and in *Doughty v. Lomagunda Reefs, Lim.* (1902, 2 Ch. 837). Therefore, both on the express terms of the memorandum and upon authority, the fact that the sale was for partly-paid shares and in view of a winding-up did not cause it to be *ultra vires*. But it was further said that the sale was not within the memorandum because of the provisions of the agreement with reference to the taking up by the company or its nominees of the unpaid shares. As an agreement between vendor and purchaser, and having regard to the peculiar nature of the consideration—namely partly-paid shares—he could see nothing in it to render it anything but a *bond fide* sale of assets by one company to another. The agreement was in effect one by which a new company purchased the assets with the object of working the assets and carrying on the business, and it was plain from the agreement that to carry on the business the new company must be provided with funds, which it would derive from the fact that the consideration was partly for unpaid shares. Remembering that, it was necessary for the vendor company, and for the purchasing company if they were to get the benefit of the purchase, to make some provisions as to taking up the shares. It was necessary for the vendors to prevent themselves being under an obligation, so as to be liable for unpaid calls, and it was necessary for the purchasing company to make some stipulation to ensure, so far as it was possible, the provision of further capital, so as to enable the assets to be employed profitably. That was provided for by Clauses 5 and 6 of the agreement. Looked at as an agreement for sale and purchase in view of a winding-up, those provisions were reasonable in themselves, and did not prevent it being an agreement for sale within Clause (w). But the plaintiff said the agreement could not be looked at by itself. To a certain extent that argument was true. The agreement was part of a series of transactions to bring about the reconstruction of a company with capital not fully, but partly paid up. But that did not carry the matter far enough. Although the agreement was made with a view to winding-up, it left the vendor company free, within limits which were reasonable as between vendor and purchaser, to deal with the consideration money as they thought fit. The authority which was most relied upon by the plaintiff on this point was *Manners v. St. David's Gold and Copper Mines, Lim.* (1904, 2 Ch. 593). The effect of that case was that the Court of Appeal came to the conclusion that the agreement in that case was not a sale within the memorandum, but was a device to compel fully-paid shareholders to contribute further capital or forfeit their shares. A vital distinction between that case and the present was that the agreement there bound the vendor company to deal with the consideration in a particular manner, and contained a provision to the effect that any shareholder who did not accept the new shares forfeited for the benefit of the purchasing company his share in the

assets of the vendor company. On that ground the decision there went. The obvious result of the provisions of the agreement there was that the shareholder was compelled either to take the partly-paid shares which were offered, or to lose all his interest in the vendor company, and not only that, but the value of his interest went wholly to the purchasing company. There was still the final point in the present case. Was the proposed distribution according to the due course of winding-up? Each shareholder was to be at liberty to take the shares which were offered him, but there was the provision that if any number of shareholders should not desire to take their shares they should be sold, and the proceeds distributed among them in proportion to the shares held by them in the old company. His Lordship did not think there was anything in this otherwise than in accordance with a distribution in due course of winding-up, for which *Burdett-Coutts v. True Blue (Hannan's) Gold Mine* (1899, 2 Ch. 616) was an authority. In his view neither on authority nor on principle was the proposed distribution *ultra vires*. With regard to *Bisgood v. Nile Valley Company, Lim.* (ante, p. 317), it might be noticed that the agreement there had not been actually entered into, and that fact might have had something to do with the decision, because Mr. Justice Kekewich had not to consider an executed contract, but rather a proposal whether what was contemplated was fair or not. Another distinguishing factor in that case was that provisions were inserted in the agreement of sale as to what should be done with the shares to be distributed, and it was not left open to the company to deal with them as they thought fit, but they were bound by the agreement. The result was, in the present case, that upon the neat question whether the company were acting *ultra vires*, his Lordship must come to the conclusion they were not, but as to whether it was fair or unfair he would say nothing, and would disclaim any intention of expressing an opinion. The motion, therefore, must be refused, and the defendants' costs of the motion would be their costs in the action.

(22 *Times Law Reports*, 400.)

## Miscellaneous.

### KING'S BENCH DIVISION.

March 21 and 22.

(Before FARWELL, J.)

#### Litchfield v. Dreyfus.

"Money-lender"—*Legitimate Art Business—Payment by Bills—Loans to Private Friends—Money-lenders' Act, 1900* (63 & 64 Vict. c. 51), s. 6.

This action raised an important point as to what constitutes a "money-lender" within the meaning of the Money-lenders Act, 1900.

The plaintiff sued the defendant on three bills of exchange, and there was no defence to the claim as it stood. The defendant, however, alleged that the plaintiff was an unregistered "money-lender" within the meaning

of the Money-lenders Act, 1900, and could not accordingly, as such, recover anything under the bills; and he now asked leave to amend his pleading by putting in an allegation to this effect.

It appeared from the evidence that the plaintiff, prior to 1903, had carried on a well-known business as dealer in curios, antiques, &c., and that in the course of this business, and in legitimate pursuit thereof, he had sometimes taken bills from his customers in payment of amounts due to him. In June 1903 he had discontinued this business, and had sold his stock-in-trade. Very large sums had been realised by this sale, and bills had again been taken for a very large portion of the purchase-money. It appeared, also, that the plaintiff had assisted two businesses in which he was largely interested; and that he had financed them by taking and discounting the bills of their customers, or by taking bills for interest due on certain debentures which he held in one of these businesses. Lastly, he had also assisted certain old friends and business acquaintances, amounting in all to about ten persons, to whom he had lent money, apparently on easier terms than they would have got elsewhere, and from whom he had taken bills.

#### JUDGMENT.

Farwell, J., said that since the decision in *The Victorian Daylesford Syndicate v. Dolt* (1905, 74 L.J. Rep. Ch. 673; L.R. (1905) 2 Ch. 624) it was, of course, a most serious consideration to determine what constituted a money-lender within the definition of section 6 of the Money-lenders Act, 1900, which expressly excepted (sub-section d) "any person *bond fide* carrying on the business of banking "or insurance or *bond fide* carrying on any business not "having for its primary object the lending of money, in "the course of which and for the purposes whereof he lends "money." In the present case it was plain that the plaintiff formerly carried on a perfectly legitimate business as an art dealer, and that, as incidental to that business, he took bills in payment from his customers. It was admitted also that he had taken bills in payment for the sale of his stock-in-trade. In his judgment, the subsequent negotiations and dealings with those bills, whether by renewal or otherwise, came clearly within the exception in section 6. With regard to the assistance and financing of the two businesses, there was nothing in that, so far as he could see, that could be called money-lending. Then as to the loans to private friends, that did not constitute the plaintiff a "money-lender" in the sense in which he understood that term. He understood a "money-lender" to mean a man who was ready and willing to lend to all persons, provided, of course, that they were otherwise eligible. He thought that the true meaning of the Act was that it was intended to apply to people who were carrying on the real business of money-lending in such a way as to make themselves obnoxious. On the facts of the present case he held that the plaintiff did not carry on, and never had carried on, the business of a money-lender. Under these circumstances the amendment under the Act ought never to have been asked for, and the defence failed entirely.

(L.J. 232.)

## Law Reports.

### Administrations.

#### CHANCERY DIVISION.

March 23.

(Before KEKEWICH, J.)

*In re Bourne; Davey v. Bourne.*

*Arrest—Trustee—Executor—Debtor appointed Executor—Debtor able to Pay Debt—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, subsec. 3.*

This was a motion by the plaintiffs for leave to issue a writ of attachment against the defendant Joseph Bourne for his alleged contempt in not paying into Court a sum of £2,131 17s. 3d., pursuant to the judgment in the action. The judgment declared that the defendant was accountable for the sum in question "as assets in his hands belonging to the estate of the testator" with interest, and ordered the defendant to pay the money into Court within fourteen days after service of the judgment.

The facts were as follows:—During the testator's lifetime he advanced to the defendant the sum of £2,000, and for this sum the defendant gave him four promissory notes. This debt was still due from the defendant to the testator at the time of his death, on May 18 1904. The testator appointed the plaintiff, Augustus B. Davey, and the defendant executors of his will, and the will was proved by both executors. Notwithstanding repeated applications to the defendant by his co-executor for payment of this debt, the defendant refused to pay, and denied his liability to the testator or his estate, and ultimately Mr. Davey and Miss Alberta Bourne, the residuary legatee under the will, commenced this action in the Chancery Division against the defendant, and obtained judgment against him before Mr. Justice Joyce in the terms above mentioned. This judgment was personally served on the defendant on August 14 1905, but he made no serious attempt to comply with it, and on August 26 1905 he filed his own petition in bankruptcy. The plaintiffs' case was that the defendant got rid of practically the whole of his property and paid off certain of his creditors without making the slightest provision for the plaintiffs' claim, and that he took every available step he could to evade payment, notwithstanding that since the time of the testator's death he had at one time ample means in his hands for payment, and they submitted that he was a trustee or person acting in a fiduciary capacity within sub-section 3 of section 4 of the Debtors Act, 1869, and was liable to imprisonment for non-compliance with the judgment.

#### JUDGMENT.

Mr. Justice Kekewich said that in order to succeed on this motion the plaintiffs must bring the case within the third exception in the fourth section of the Debtors Act, 1869—"Default by a trustee or person acting in a fiduciary

"capacity and ordered to pay by a Court of Equity any "sum in his possession or under his control." In the large majority of cases of this class which came before the Court there was nothing to be done in order to see whether the case fell within the exception but to refer to the order under which the defendant was liable to pay. If the order was properly drawn, it expressed on the face of it the position of the defendant as trustee or as occupying a fiduciary character and then the Court did not allow the defendant to go behind that and say that notwithstanding the order he really did not occupy that position. That was the settled practice of the Court and was recognised in *Preston v. Etherington* (37 Ch.D. 104). He therefore turned in the first instance to the judgment in this case. Did that judgment treat the defendant as owing the money in a fiduciary character? In his Lordship's opinion the language was ambiguous upon that point, and he thought that it was open to the defendant to say that it contained no clear declaration that he owed the debt in a fiduciary character. A trustee was accountable not only for what he had in his hands but for what he had in the hands of an agent and sometimes for what he ought to have received. Accountability did not conclude the question whether he had actually received the money or not and unless the money was in his possession or under his control attachment could not be ordered. He was inclined to think that the meaning of the order was merely to point out in what respect the defendant was accountable, and that if that was the true construction he could not send a man to prison on that order without going into the facts. Therefore he must be satisfied that the money was in the defendant's possession or under his control in a fiduciary character. Of the fiduciary character there could not be much doubt. He owed the money as executor but the real question was whether the money was due from him at all in the sense that it was in his possession or under his control. It appeared that the testator advanced a considerable sum of money to the defendant, for which he gave promissory notes. He was a mere debtor for that sum. When the testator died he was his executor. He was then in the position of a debtor appointed executor. Therefore, as regards his liability to the estate, he fell within the description given in Williams on Executors, 10th ed., p. 1,056:—"The effect in equity of the appointment of a debtor to the office of executor is . . . that "the debt due from the debtor executor is considered to "have been paid to him by himself; and upon this supposition it is an established rule in equity that the executor "shall be accountable for the amount of his debt as assets." Now, could a man be sent to prison because being an executor he was also a debtor? That point had been decided by Vice-Chancellor Malins in *Metcalf's case* (13 Ch.D. 815, at p. 820), where he said:—"I put the case of

"an executor who was indebted to the estate of his testator, "by which I mean not a debt incurred after the death of "the testator, but money which he owed to the testator "when he died. Is that money in his hands in a fiduciary "character? As I conceive, certainly not." The same thing was decided by Mr. Justice Stirling in *In re Woodward* (30 S.J. 753). But that was only a small part of this case. The Court was entitled to look into the circumstances, and in this case there was conclusive evidence that the defendant since he became executor had the means to pay, and not only did not pay, but would not pay, and that, rather than pay, he went into bankruptcy to defeat these particular creditors. Now, the Court of Appeal in *In re Smith* (1893, 2 Ch. 1, at p. 18) said this:—"Andrews "trusted his co-trustee Hooton, and handed money to him, "and this money was misapplied. Andrews is liable for it; "but he was not himself guilty of any dishonesty or fraudulent breach of trust." If he had been guilty of dishonesty or fraudulent breach of trust he would have been liable to go to prison, notwithstanding the money was not in his hands, because he allowed the money to go into the hands of a fraudulent trustee. Had this defendant been dishonest? He did not pay his debt. There was no authority for holding that a man who did not pay his debts was necessarily dishonest. Nor could it be regarded as dishonest to seek the aid of the Court of Bankruptcy. But it was dishonest to incur debts which you knew you could not pay, and it was equally dishonest not to pay your debts when you had the means to pay. This defendant at one time was possessed of ample means to pay this debt, but he neglected, or, rather, he pertinaciously refused, to pay. That, within the language of the Court of Appeal, was dishonest, and the law treated that debt as money in his hands. He had the money, so to speak, in his private pocket, and he ought to have taken it out of his private pocket and transferred it to his trustee-pocket. His Lordship thought that the defendant had had the money, not only in law, but in fact, as executor, and that he ought to be punished by being sent to prison.

The defendant's counsel having intimated that he would take steps to serve notice of appeal immediately, the Court ordered that nothing should be done under the order in the meantime.

The defendant appealed.

#### COURT OF APPEAL.

April 4.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

#### JUDGMENT.

The Court dismissed the appeal.

The Master of the Rolls said that this was an appeal from an order of attachment made by Mr. Justice Kekewich. That order was based upon the non-compliance

by the defendant with a judgment made by Mr. Justice Joyce, whereby it was declared that the defendant was accountable for a certain sum of money as assets in his hands belonging to the estate of the testator, and he was ordered to pay the money into Court within a certain time. In point of fact, the defendant was the executor of the testator, and he owed this money to the testator. No doubt he thought that as between him and the testator the testator never intended him to pay, and he acted on that footing, and never did pay the debt, although he had effects in his hands out of which he might have paid it. Ultimately proceedings were taken in the Chancery Division, which resulted in the judgment above stated. The present application was made under sub-section 3 of section 4 of the Debtors Act, 1869, which preserves the right of attachment in the case of "default by a trustee or "person acting in a fiduciary capacity and ordered to pay "by a Court of equity any sum in his possession or under "his control." The way in which the defendant was brought under that sub-section was this. He was an executor owing a sum of money to the testator at the testator's death, and being executor there was a difficulty at common law in suing him for the debt, because, being both the person to receive and the person to pay the money, he could not be made responsible. But the whole matter was now governed by the rules of equity, and in equity the executor was deemed to have paid himself the debt which he owed in a fiduciary capacity, and he was deemed to be in possession of the money in that capacity. That appeared from the form of the judgment in this case. In these circumstances, default having taken place, it was clear that this case came within the jurisdiction preserved by sub-section 3 of section 4 of the Debtors Act. Then came the question of discretion. So far as discretion was concerned the learned Judge had exercised his discretion unfavourably to the defendant, and had given his reasons for exercising it; and, in his Lordship's opinion, the conclusion of the learned Judge was abundantly justified by the evidence. The defendant took up the position that he ought not to be called upon to pay this money, and before Mr. Justice Joyce he set up the defence that the debt was intended as a gift, and that defence was found to be hopeless. However, the defendant decided for himself that, whatever the objection of the law was, he ought not to pay, and accordingly he deliberately took steps to make that judgment fruitless. In these circumstances the learned Judge acted quite rightly in exercising his discretion by making an order for attachment. The appeal failed.

Lord Justice Romer agreed. With regard to the legal question, he had no doubt whatever that the defendant came within the provisions of sub-section 3 of section 4 of the Debtors Act, 1869, and that he was in the position

of a trustee who had made default when acting in a fiduciary capacity and ordered to pay by a Court of equity a sum in his possession. Being indebted to the testator, the debtor was appointed executor and proved the will. The effect of that was that at law the debt was extinguished, because there was no one to sue or be sued. But in equity he was held to have paid himself, and, therefore, to have the money in his possession as executor. That was the view of equity, and it was on that footing that he could be made liable in an action to administer the estate of the testator. It was on that footing that Mr. Justice Joyce found that the defendant was liable to pay the sum of money in question as being money in his hands belonging to the estate of the testator. Therefore, from the legal point of view, using "legal" in the wider sense as including equity as well as law, this defendant having received the amount of the debt as executor, the money was in his possession as executor, and it was impossible to argue that he was not liable to attachment, or, rather, it would be impossible to so argue were it not for a *dictum* of Vice-Chancellor Malins in *Metcalf's* case (13 Ch.D. 815, at p. 820). That was a mere *dictum*, which, except by way of illustration, had nothing to do with the case before him, and in his (the Lord Justice's) opinion it was not well-founded. Some observations of Mr. Justice Stirling in *In re Woodward* (30 S.J. 753) were also relied on, but it was clear that the learned Judge considered that that was a case in which, though he had jurisdiction to commit, the question was whether, in the exercise of his discretion, he ought to make the order. He was dealing with the case, not as one of law, but as one of fact; and, although at law the debtor in that case had the money in his hands in his fiduciary capacity, he proceeded to inquire whether in fact the debtor had this money, and he made that inquiry for the purpose of exercising his discretion. He, the Lord Justice, had no doubt that the defendant in this case fell within the exception in the Debtors Act, and that there was jurisdiction to commit him if the circumstances were such as to justify his committal. He thought that the Court in exercising its discretion ought to inquire, not only whether as a matter of law the executor had the money in his possession, but whether he had it in his possession in substance and in fact. Suppose it appeared that the executor never had any means available for payment of the debt, speaking for himself, his Lordship would have thought that was not a case in which a committal ought to be ordered. He would go further and would say that when money came into the hands of the executor which he might apply in payment of his obligation to the testator's estate, and the executor found himself insolvent, and, knowing that he had other creditors who had the same moral right to be paid, took proceedings in bankruptcy, in that case also, speaking for himself, he would

have thought that no order for committal ought to be made. But looking at all the circumstances of this case, he agreed that the learned Judge was amply justified in exercising his discretion by making an order for committal.

Lord Justice Cozens-Hardy delivered judgment to the like effect.

(22 *Times Law Reports*, 417.)

## CHANCERY DIVISION.

March 30.

(Before SWINFEN EADY, J.)

*Re Smith (dec.); Smith v. Dodsworth.*

*Will—Annuity—Tenant-for-Life and Remainderman—Capital or Income—Charges in respect of Compensation Fund—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3.*

Originating summons. The testator, John Francis Smith, died on the 11th of March 1896, having by his will dated the 12th March 1892 appointed his wife, the plaintiff, Ann Smith, and the defendants, John Travis Cook and John William Harrison, executors and trustees thereof, and made certain pecuniary and specific bequests, devised and bequeathed all the rest of his personal estate and all his real estate to his trustees upon trust to permit his wife during widowhood to have the enjoyment of his household effects and to occupy rent free his then present residence, and upon trust to pay her out of the income of his trust estate during her widowhood an annuity of £200 and to accumulate any balance of such income for the purpose of reducing the incumbrances on his real estate, but with full power to resort to such accumulations for the purpose of repairs or insurance or otherwise, incurred in connection with his estate, or for making up the said annuity as his trustees should see fit. And upon the marriage again or death of his wife, upon trust as therein mentioned. The testator's real estate consisted of several small freeholds, including three beerhouses with on-licences, situate at Kingston-upon-Hull, let to different tenants at a total rent of £120 per annum. In 1905 quarter sessions imposed charges towards the compensation fund, under section 3, sub-section 1, of the Licensing Act, 1904, in respect of the three beerhouses, the total amount of the charges being £23 8s. 4d., and the respective tenants thereupon deducted a proper proportion thereof from their rents, in pursuance of section 3, sub-section 3, of the above Act. The income of the trust estate not being sufficient to pay the widow's annuity of £200, she issued this summons to have it determined whether the amounts so deducted from their rents by the respective lessees of the said beerhouses on account of the said charges ought to be borne and raised wholly or in part by and out of the capital of the said estate by way of exoneration of the income thereof. For the plaintiff it was contended that the widow, being entitled to the whole income of the estate, was practically a tenant-for-

life, and as such was entitled to be recouped out of the capital of the estate in respect of the whole or a proportionate part of the deductions made by the tenants from their rent, it being contended that the charge was in the nature of an insurance, or a payment made for the preservation of the property: *Dent v. Dent* (30 Beav. 363), *Re Barney* (43 W.R. 105), and *Re Farnham* (1904, 2 Ch. 561). For the defendants it was contended that no part of the deductions in respect of the charges under the above Act ought to be paid out of capital, that the case was not strictly between tenant-for-life and remainderman, and that the charge was not strictly in the nature of an insurance, and that the cases cited by the plaintiff were cases of permanent improvements to property: *Re Crawley* (28 Ch.D. 431).

## JUDGMENT.

Swinfen Eady, J., after stating the facts, said that on the construction of the will all that the widow was entitled to was a yearly sum of £200 out of the income of the trust estate, and that the income having, by reason of the deductions made in respect of the charges under the above Act, become insufficient to pay her annuity, and the will containing no provision as to augmenting the income, there was nothing, according to the language of the will, to throw any part of the charge upon capital. The Act contained no provision throwing the charge upon capital, it rather contemplated that the charge would be borne by the persons entitled to the income, as it enacted by section 3, sub-section 2, that the charges should be levied and paid together with and as part of the duties on the corresponding excise licence. The charge was in the nature of an annual charge properly payable out of income, and bore no analogy to money paid by way of salvage. His Lordship, after referring to the case of *Re Crawley* (*supra*), stated that he thought this was a case in which the Legislature had provided the way in which the charge was to be borne, and that there was nothing in the will, the statute, or general law that enabled the plaintiff to throw any portion of the annual charge upon the capital of the estate.

(50 S.J. 376.)

## Bankruptcies and Insolvencies.

## DIVISIONAL COURT IN BANKRUPTCY.

April 2.

(Before BIGHAM and WALTON, JJ.)

*Re E. J. Stanbury Eardley.**Bankrupt — Failure to Complete Statement of Affairs — Committal.*

This was an application by the Official Receiver for committal of the debtor on the ground of his non-compliance with an order of that Court made on the 6th of February 1906 for the filing of a proper statement of affairs.

The debtor had filed a statement after the time had expired, but it had been returned to him as insufficient and incomplete, the summary totals on the front sheet not agreeing with the schedules attached thereto.

## JUDGMENT.

The Court made an order for committal, the order to lie in the office for a week, and allowed the Official Receiver's costs out of the estate.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## DIVISIONAL COURT IN BANKRUPTCY.

April 2.

(Before BIGHAM and WALTON, JJ.)

*Re S. S. Green; ex parte William Nash v. Official Receiver.**Bankrupt — Discharge — Promise to Pay Debt released by Bankruptcy.*

The point raised here was whether a person after his discharge could for a new and valuable consideration promise to pay a creditor the amount of his debt from the payment of which the bankrupt had been legally released by discharge.

## JUDGMENT

Held that he could, following the cases of *Jakeman v. Cook* (4 Ex.Div.) (Bankruptcy Act, 1869) and *Re Aylmer* (1 Manson).

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## DIVISIONAL COURT IN BANKRUPTCY.

April 2.

(Before BIGHAM and WALTON, JJ.)

*Re Rev. A. A. Barratt; ex parte Executors of the late Lord Foley v. Official Receiver.**Offer to Creditors—No quorum at Meeting—Application for Directions.*

Application by creditors to reverse order of Registrar at Kingston County Court, under which Official Receiver had accepted a sum in order to agree to a relaxation of a sequestration order on the debtor's living. Counsel in support of appeal stated that the sequestration order was made on the 6th June 1902, the Bishop issued his inhibition on the 7th October 1903, and at the meeting of creditors there was not a quorum present, and the Official Receiver applied to the Registrar with regard to the offer. The argument in support was that the acceptance would have the effect of doing away with the sequestration order in an indirect way, whereas it could not be done in a direct manner, the emoluments of the living not vesting in the trustee, he simply receiving the balance of revenue after the payment of prior charges.

An actuarial valuation was submitted showing the present value as £157, after taking into consideration the value of the debtor's life. The net income was stated at £31 only.

## JUDGMENT.

After hearing counsel for the Official Receiver, Mr. Justice Bigham held that the Registrar had exercised proper care, and that the trustee could consent to the relaxation of the sequestration in consideration of a sufficient sum of money. The Court was satisfied that a proper consent had been made. It had nothing to do with the object of the offer. The Official Receiver had to realise to the best of his ability and the Registrar had acted wisely.

Appeal dismissed, with costs of Official Receiver and leave to appeal declined.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## DIVISIONAL COURT IN BANKRUPTCY.

April 2.

(Before BIGHAM and WALTON, JJ.)

*In re J. B. Mellison (dec.); ex parte Day and the Trustee, &c.*

*Administration Order—Section 125 of 1883 Act—Power of Disclaimer.*

An appeal against disclaimer, which, it was argued, ought not to have taken place, as the trustee had no power to disclaim under an administration order—Section 125 of the Bankruptcy Act, 1883. In support of the application the case of *Hasluck v. Clark* (6 Man. 146) was cited, where it was held that section 45, which restricts rights of creditors under execution or attachment, does not apply to section 125; and in *Re Gould* (19 Q.B. 92) that section 47, which avoids certain voluntary settlements did not apply to the administration of a deceased insolvent's estate.

After some discussion as to the meaning and intention of section 10 of the Judicature Act, 1875,

## JUDGMENT.

The Court held that there was no reason to doubt the jurisdiction of the trustee in the matter. He became entitled to exercise all the rights with regard to disclaimer which a trustee in bankruptcy could enforce. The observations of Mr. Justice Cave in *Re Gould* were *obiter dicta* only, but they were observations of a Judge who had made a special study of the Bankruptcy Act. The appeal would therefore be dismissed with costs, with leave for further appeal.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

**Company Law.**

## CHANCERY DIVISION.

March 16.

(Before SWINFEN EADY, J.)

**Vansittart v. Cordoba and Rosario Railway Company, Lim.**

*Company—Arrears of Preference Dividend Paid by Issue of New Shares—Shares Retained to Meet Possible Income Tax Claims go as if Issued Originally.*

Motion. In June 1905 the Cordoba and Rosario Railway Co., Lim., obtained an Act of Parliament authorising an

increase of capital for the purpose of providing for the payment of arrears of preference dividend. The Act provided that arrears of dividend on the existing preference stock amounting to £432,000 should be provided for by the issue of fully-paid second preference shares to that amount. It was provided by the Act that 432,000 shares of £1 each should "be allotted and issued to and accepted by the holders of the 6 per cent. preferred shares, part of the original capital of the company, rateably in proportion to the number of 6 per cent. preferred shares held by them respectively in discharge of all claims in respect of arrears of dividend on the 6 per cent. preferred shares held by them respectively up to the 31st of December 1903." On the 1st of August 1905 a resolution was accordingly passed that the 432,000 second preferred shares should be allotted to and amongst "the holders of the 6 per cent. preferred shares, part of the original capital of the company, whose names shall appear upon the registers of the company at the close of the business on the 4th of August rateably in proportion to the number of 6 per cent. preferred shares held by them respectively in discharge of all claims in respect of arrears of dividend," as provided by section 3 of the private Act above quoted. By a further resolution it was determined that out of the allotment so made "there be deducted one-twentieth of such second preferred shares and that the same be held in reserve for the purpose of satisfying any demand for income-tax which may be sustained by the Inland Revenue authorities." Accordingly, at the distribution of second preference shares, which took place in accordance with these resolutions in September 1905, a circular was issued to the persons to whom shares were thus allotted, informing them of this deduction and its purpose. The claim for income-tax by the Inland Revenue authorities was ultimately withdrawn, and the shares retained to meet this claim became distributable. But since the 4th of August 1905 many of the 6 per cent. preference shares had changed hands, and a question had accordingly arisen, who were the persons to take these deducted shares? The plaintiff in this action was a person who had, on the 4th of August 1905, owned 6 per cent. preference shares with which he had since parted, and this was a motion for an injunction to restrain the defendant company until judgment or further order from issuing or delivering the new stock now in their hands otherwise than to the persons who on the 4th of August 1905 were the holders of the 6 per cent. preferred shares of the company or their legal personal representatives. In support of the motion it was argued that the resolution of the 1st of August 1905 effected an allotment of the whole of the 432,000 shares, and that the further resolution did nothing except provisionally retain the one-twentieth part of these shares. For a recent purchaser of 6 per cent.



preference shares it was contended that the second resolution was to be taken as cutting down the number by one-twentieth, and that these must now be issued to the persons who had bought the preference shares in respect of which they were payable.

#### JUDGMENT.

Swinfen Eady, J., in giving judgment, said that he could read the resolution of the 1st of August in no other way than as an allotment of the whole 432,000 shares. The second resolution was only a provision holding in reserve a part of the shares allotted. The allotment of shares was only authorised in regard to claims in respect of arrears of dividend of which it was a discharge. These claims were those of the persons upon the register of the company on the 4th of August, and the certificates for the shares now in question must be issued to the persons to whom those shares were in fact allotted—namely, the persons on the register of the company on the 4th of August 1905. This judgment must, however, not be taken to decide any questions as between the various shareholders, for some of the 6 per cent. preference shares might have been sold with and some without the right to this allotment, but it was a decision of the question as between the company and the shareholders only.

(50 S.J. 376.)

#### CHANCERY DIVISION.

April 4, 5, 6, and 11.

(Before JOYCE, J.)

#### Brookes v. Hansen.

*Company—Prospectus—Misleading Statements—Non-disclosure—Sub-purchaser—Liability of Director—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 10 (1) (f)—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64).*

This was an action by a shareholder in the South African Super-Aëration, Lim., against a director claiming damages for loss sustained by the shareholder in respect of certain alleged untrue and misleading statements in the prospectus of the company, and for suppression of material facts therefrom.

The prospectus was dated June 1 1901, the same day as the incorporation of the company, and it stated, *inter alia*, that the company was formed to work and develop the super-aeration system of dispensing aerated waters in the South African Colonies, and to acquire the benefit of applications already made for letters patent in those Colonies in relation thereto, and the exclusive rights to the letters patent when granted.

The dates and parties to two contracts were set out in the prospectus, but the price paid for the rights to these letters patent under the first of these contracts by the immediate vendors to the company was not stated. The main question argued was whether there had been a

sufficient compliance with the requirements of section 10 (1) (f) of the Companies Act, 1900. By that sub-section it was required that every prospectus of a company should state "the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, . . . or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor."

The first of these contracts was dated May 11 1901, and was an agreement for the sale of certain patent rights from one Wheeler to the African Patent Rights, Lim., for £15,000; and the second contract, dated June 1 1901, was a sale from the African Patent Rights, Lim., to the present company of the same patent rights for £58,500.

It appeared that the purchase-money payable under the first contract was borrowed from a gentleman and paid to Wheeler on May 31, the day before the incorporation of the company and the issue of the prospectus.

It was argued for the plaintiff, who had taken eighty shares in the company which proved to be of no value, that the company was a sub-purchaser within the meaning of the sub-section, and that the amount paid to Wheeler should have been stated in the prospectus.

#### JUDGMENT.

Joyce, J., was of opinion with reference to the question arising under section 10 of the Companies Act, 1900, that where a company was the purchaser of a property which belonged absolutely to the vendor, there was no suggestion in the sub-section in question of any obligation to disclose the amount of the purchase-money, however small, paid by the vendor, upon his acquisition of the property, however recent. Generally speaking, a company was not a sub-purchaser within the meaning of section 10 (1) (f) unless it had to pay the purchase-money to someone other than its own vendor, and the sub-section did not require the statement, in the company's prospectus, of the amount of any consideration, cash, shares, or debentures paid or to be paid by anyone other than the company itself. In his Lordship's opinion the company here was not a sub-purchaser within the sub-section, and there had been no failure to comply with the provisions of the statute.

With regard to two other alleged misleading statements his Lordship held that the defendant had reasonable ground for believing one to be true, and the other could not reasonably be complained of. Consequently, the action failed, and must be dismissed with costs.

(L.J. 263.)

**Income Tax.****CHANCERY DIVISION.**

March 27.

(Before KEKEWICH, J.)

**Barry v. Smart.**

*Inland Revenue—Husband and Wife—Deed of Separation—  
Alimony—Income Tax—Husband's Right to Deduct—  
Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 102.*

This adjourned summons was commenced by originating summons taken out by the plaintiff on the 8th of July 1905 for the determination (*inter alia*) of the following question: Whether income-tax could be deducted by the plaintiff's husband from the payments made by him to the plaintiff under a deed of separation dated the 24th of March 1903? The defendants were the said husband and the trustees of the said deed of separation. On the 19th of July 1900 the plaintiff presented a petition for the dissolution of her marriage with the defendant, her husband, and for the custody of the seven children, issue of the marriage. When this petition was in the paper for hearing, and was about to be heard, the plaintiff and the defendant, her husband, agreed upon a deed of separation dated the 26th of November 1901, whereby an arbitrator was appointed, and it was (*inter alia*) referred to him to decide what provision ought under the circumstances of the case to be made by the husband in respect of (a) the allowance to be paid by him to the plaintiff, and for what period or periods, by way of alimony or maintenance; (b) the allowance to be paid by him to the plaintiff, and for what period or periods, for the maintenance, education, and support of the children of the marriage. After a long investigation the arbitrator made his award on the 10th of October 1902. By this award the husband was to pay the plaintiff for her life by way of alimony or maintenance the sum of £450 per annum, payable quarterly in advance, in addition to a sum of £150 then already secured to her by an indenture dated the 12th of March 1900, and he was also to pay to the plaintiff the sum of £40 per annum, payable quarterly in advance, in respect of each son until he should attain the age of twenty-one, and in respect of each daughter until she should attain the age of twenty-one or marry. The deed necessary to carry out the terms of this award was afterwards settled by the arbitrator and was executed on the 24th of March 1903. The husband at first paid to the plaintiff the various sums mentioned above in full without making any deduction for income-tax, but by a letter dated the 5th of October 1904 one of the trustees intimated that the husband had decided that in future he would deduct income-tax before making the payment of £450. There was some correspondence on the subject between the parties, and finally the plaintiff issued the summons as stated above. There was nothing

to show whether the arbitrator had intended that this payment should be made in full or whether he intended that income-tax should be deducted. For the plaintiff it was contended that it was the practice of the Divorce Court to estimate the net income of the husband after deducting income-tax and other outgoings in order to arrive at the amount of alimony to be paid by the husband, and that the alimony is, therefore, payable in full: *Frankfort v. Frankfort* (4 Notes of Cases, 280). For the husband it was urged that he was entitled to deduct income-tax under section 102 of the Income-tax Act, 1842, and that this case was distinctly covered by *Warren v. Warren* (43 W.R. 490, 72 L.T. 628). *Pemberton v. Pemberton* (2 Notes of Cases, 17) was also cited.

**JUDGMENT.**

Kekewich, J., in giving judgment, said that this case was directly covered by *Warren v. Warren*. In that case it was held that the payment was subject to the deduction of income-tax. In *Pemberton v. Pemberton* it was also held that such a deduction must be made. In *Frankfort v. Frankfort* the point was gone into very fully, but under entirely different circumstances, and that case did not apply here. This was a case of a contract under section 102 of the Income-tax Act, 1842, and did not depend on any practice of the Court. The £450 per annum must therefore be paid less income-tax, so far as the payments not yet made. The trustees, although they appeared separately, could only be allowed one set of costs as between party and party.

(50 S.J. 376.)

**Miscellaneous.****CHANCERY DIVISION.**

April 4, 5, and 7.

(Before FARWELL, J.)

**Attorney-General v. De Winton.**

*Municipal Corporation—Borrowing Powers—Ultra Vires—  
Liability of Treasurer—Municipal Corporations Act, 1882  
(45 & 46 Vict. c. 50)—Public Health Act, 1875 (38 & 39  
Vict. c. 55)—Public Authorities Protection Act, 1893  
(56 & 57 Vict. c. 61), s. 1.*

Action by the Attorney-General at the relation of C. F. E. Allen, and also by the relator, who was a Burgess and town councillor of the borough of Tenby. The defendant, W. S. de Winton, was the treasurer of the borough and also the South Wales district manager of Lloyd's Bank, Lim. The defendant was appointed treasurer on the 6th of July 1903, the corporation at that date having an overdraft at the said bank beyond their statutory powers of borrowing of £4,959 11s. 9d. On the 23rd of July 1903 the council of the said borough passed a resolution "That Lloyd's Bank,

"Lim., at Haverfordwest, being the bankers of the corporation, be and they are hereby authorised to honour all cheques drawn on the treasurer, whether the account be in credit or overdrawn, signed by any three members of the town council for the time being, and countersigned by the town clerk, and to accept the indorsement of the said town clerk upon all cheques paid to the credit of the account, and that the authority be given under the common seal." On the 18th of June 1904 the overdraft had increased to £5,795, and at the date of the commencement of the action amounted to £3,707, but had since been discharged. During the period between the defendant's appointment and the commencement of the action, the borough had accounts of their borough fund under the Municipal Corporations Act, 1882, and of their district rates, and water rates under the Public Health Act, 1875, and of harbour and pier rates under private Acts and orders; all these accounts fluctuated from time to time, but were always overdrawn to some extent, and on all of them the defendant had debited the borough and credited himself with interest at  $4\frac{1}{2}$  per cent., with quarterly rests, the total amount of such interest for the period from the 23rd of July 1903 to the 30th of June 1904 was £215 5s. 6d. On the 26th of September 1904 the writ in this action was issued claiming (1) a declaration that the payment made by the defendant as such treasurer, or charged against the said borough by the defendant in his accounts as such treasurer, as and by way of interest on certain overdrafts, granted to the said borough by the defendant or by Lloyd's Bank, Lim., were illegal, and to the knowledge of the defendant beyond the powers of the corporation of Tenby and a breach of trust, and (2) an injunction to restrain the defendant from any further payments out of the funds of the corporation of any further sums by way of interest upon any of the said overdrafts. For the plaintiff it was stated that no imputation was made against the defendant, the action being to determine points of law only. It was contended that the corporation defrayed the interest on their said overdrafts from time to time by means of pier and harbour rents, rates, and tolls, and that this was illegal. For the defendant it was contended that he had acted as the servant and by the order of the corporation in execution of the Municipal Corporations Act, 1882, and the Public Health Act, 1875. He also relied on the Public Health Act, 1875, section 265, and the Public Authorities Protection Act, 1893, section 1. He also contended that the corporation ought to be made defendants.

## JUDGMENT.

Farwell, J., in the course of his judgment, overruled the objection that the borough were necessary parties to the action; no claim was made against the borough; they would not be bound by any decision in that action, and their interests were not likely to be prejudiced by any lack

of information on the defendant's part, inasmuch as the town clerk happened to be the defendant's solicitor in the action. He did not think the defendant's contention that he was not personally liable, but merely acted as the servant of the borough was well founded. It has been settled since Lord Cottenham's decision in *Attorney-General v. Aspinall* (2 M. & C. 613) that property held for public purposes is held upon charitable trusts. [He also referred to *Stevens v. Chown* (1901, 1 Ch. 894) and *Yorkshire Miners v. Howden* (53 W.R. 66).] The Court could restrain the borough from misapplying these funds on the ground of breach of trust: *Attorney-General v. Newcastle-on-Tyne* (23 Q.B.D. 492). The defendant was clearly amenable to the jurisdiction of the Court, and could not escape by pleading the wrongful orders of his employers. There was no question of repayment here, but if there had been, the defendant knew that this was a trust fund and would have been liable to refund: *Foxton v. Manchester* (44 L.T. 406). The treasurer was not a mere servant of the council, so as to enable him to plead their orders as an excuse for an unlawful act: *Reg. v. Saunders* (24 L.J.M.C. 45). As regarded the suggested analogy to the class of contracts that might bind a corporation although not under seal, the borrowing powers of the borough in this case were subject to statutory conditions, and could not be dispensed with: *Richter v. Hughes* (2 B. & C. 499) and *Wenlock v. River Dee Co.* (10 A.C. 354). The case was indistinguishable in principle from the decision in *Smith v. Southampton Corporation* (87 L.T. 171). His Lordship could see no ground for holding the overdrafts to be lawful, or for allowing the treasurer to credit himself, at the expense of the borough funds, with  $4\frac{1}{2}$  per cent. interest thereon, with quarterly rests. The objection that the Municipal Corporations Act, 1882, had provided the remedy of *certiorari*, or there could be an appeal against the rate, was disposed of by the judgment in *Attorney-General v. Aspinall* (*supra*), and had been dealt with in *Tynemoulin Corporation v. Attorney-General* (1899, A.C. 293). With regard to the contention that, the accounts having been audited under the Municipal Corporations Act, 1882, the plaintiff could not question such audit, his Lordship stated that his attention had not been called to any section making such audit finally binding on the borough and the burgesses, and he saw no reason for holding that such an audit as had been put in evidence was a bar to proceedings against the treasurer to disallow some of the items which went to make up that overdraft: *Thomas v. Devonport Corporation* (48 W.R. 89). His Lordship made a declaration that the defendant was not entitled to credit himself or to debit any of the borough funds with interest on any of the overdrafts appearing in the accounts heretofore put in by him as treasurer since his appointment. His Lordship, thinking that it would probably be less offensive, expressed himself as quite willing to accept the defendant's undertaking in lieu of granting an injunction. The defendant was ordered to pay the costs of the action.

(50 S.J. 405.)

**Law Reports.*****Bankruptcies and Insolvencies.*****COURT OF APPEAL.**

April 6.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

***In re Dallmeyer.****Bankruptcy—Discharge—Terms of Order—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8.*

Appeal against a decision of Mr. Registrar Giffard imposing certain conditions on the debtor's discharge.

The Official Receiver in his report stated various facts referred to in sub-section 3 of section 8 of the Bankruptcy Act, 1890. The Registrar made an order that the bankrupt be discharged subject to certain conditions as to setting aside earnings or income to which the bankrupt might afterwards become entitled (over and above £500 a year) for the benefit of his creditors until they should have received 10s. in the pound.

The bankrupt appealed from this order on the ground that it was made without jurisdiction.

A. Sims, for the appellant: The Registrar's order is wrong. On the facts proved in the Official Receiver's report he could only make one of the four orders mentioned in sub-section (2) (i.), (ii.), (iii.), and (iv.), and an order granting a discharge on conditions is not within any of these provisions. The earlier proviso in sub-section (2), that a discharge may be granted subject to any conditions with respect to any future earnings or income of the bankrupt, is displaced in cases like the present, which fall under the second proviso of sub-section (2), and in these cases the order is limited to the code of orders authorised by sub-sections (i.), (ii.), (iii.), and (iv.).

**JUDGMENT.**

Their Lordships were of opinion that there was a slip in the Registrar's order, since the Court was under the circumstances bound to make one or other of the orders mentioned in sub-section (2) (i.), (ii.), (iii.), and (iv.), but this did not prevent it from also imposing conditions on the discharge under the first proviso in sub-section (2) of section 8. The proper order would be instead of granting the bankrupt's discharge, to suspend it for two years, pursuant to sub-section (ii.), and to order him to be discharged two years from the date of the Registrar's order, subject to the same conditions as those imposed by the Registrar's order.

Order varied.

(L.J. 245.)

**KING'S BENCH DIVISION.**

April 4.

(Before BIGHAM and WALTON, JJ.)

***Re B. & W. Thompson.****Bankruptcy—Proof—Contra Account—Relation back of Trustee's Title.*

This case raised the question of mutual dealings and set-off.

The debtors, who were farmers, had authorised the respondent, who was an auctioneer, and from whom they had received a loan of £400, to sell their farming stock and repay himself out of the proceeds of sale. The sale took place, but before the proceeds had been collected the respondent received notice of an act of bankruptcy to which the trustee's title related back. The latter therefore claimed the sum collected, leaving the creditor to his remedy of proof against the estate for the advance of £400.

**JUDGMENT**

The Court held that there was a right to set off, and that it was not possible for the trustee to interfere, as his rights were subject to the existing arrangements at the time, and that the case was covered by that of *Palmer and Day & Son*, decided by the late Lord Chief Justice, Lord Russell of Killowen, in which it was held that a deposit by the debtor with an authority to sell and receive the proceeds constituted a giving of credit, and that there were therefore mutual dealings between the parties at the date of the bankruptcy, in respect of which the defendants had a right of set-off in bankruptcy under Section 38.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

**KING'S BENCH DIVISION.**

May 1.

(Before Registrar LINKLATER.)

***In re Woolf.****Bankruptcy—Discharge—Application for—Official Receiver's Report—Notice to Dispute Statements in Report—Bankruptcy Rules, 1886 & 1890, r. 238a.*

This was an application for an order of discharge under section 8 of the Bankruptcy Act, 1890. The Official Receiver had made a report, dated April 23 1906, containing statements as to, among other things, the amounts of the liabilities and assets, the bankrupt's course of trading, the causes of his bankruptcy, and an alleged sale by the bankrupt of his business; and the Official Receiver

reported his conclusions as follows:—That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy; that the bankrupt has continued to trade after knowing himself to be insolvent; that the bankrupt has contributed to his bankruptcy by rash and hazardous speculations; that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given undue preferences to Robinson and Joseph Woolf; that the alleged sale by the bankrupt of his business was merely a device put forward to remove his assets from the reach of his creditors and to defraud them, and that the bankrupt has been guilty of fraud. Notice had been given on behalf of the bankrupt to the Official Receiver under rule 238a of the Bankruptcy Rules, 1886 and 1890, of the bankrupt's intention on the hearing of this application "to dispute the following statements in your report dated April 23 1906." The notice then set out all the conclusions of the Official Receiver as stated above.

Mr. Registrar Linklater, having referred to the bankrupt's notice of dispute, said he would accept it as a notice of the bankrupt's intention to dispute the conclusions which the Official Receiver had arrived at, but he could not take it as notice to dispute the statements upon which these conclusions were based. If the bankrupt desired to dispute any of these statements, he might have an adjournment of this application and an opportunity of giving an amended notice. Rule 238a required that the disputed statements should be specified in the notice, and under a general notice disputing a conclusion of the Official Receiver his Honour could not allow the bankrupt to dispute all or any of the statements by which the conclusion was supported. The object of the rule was that the Official Receiver might be informed as to the statements, if any, in his report which the bankrupt proposed to dispute, and that the Official Receiver might be prepared with evidence to support those statements on the hearing of the application. If such a general notice as had been given in this case, disputing all the conclusions which the Official Receiver had come to, were held to enable the bankrupt to dispute all the statements in the Official Receiver's report, the Official Receiver would be compelled to be prepared with a mass of evidence to support his report.

Mr. Hansell said that he had intended to argue that the majority of the findings of the Official Receiver were not supported by the facts reported by him; but, as it might be necessary to dispute some of the statements upon which the Official Receiver based his conclusions, he

desired an adjournment to consider whether an amended notice to dispute should be given.

The application was accordingly adjourned.

(22 Times Law Reports, 501.)

## DIVISIONAL COURT IN BANKRUPTCY.

April 2.

(Before BIGHAM and WALTON, JJ.)

*Re Hannah Greenwood.*

*Bankruptcy—Married Woman—Definition of "Trading apart from husband."*

This was an appeal from the decision of the Registrar of the Blackburn County Court on behalf of the debtor, against whom a receiving order had been made. The point was as to whether she was trading separately and apart from her husband, who had previously failed, and who had had his domicile at the place of business and had admittedly assisted in the management.

It appeared that a sum of £200 had been borrowed, for which the wife gave her promissory note. A corn dealer's business was then started under the name of H. Greenwood, the initials of the wife, and a cart used in the trade and the receipts that were given also bore those initials.

### JUDGMENT.

The Court remarked that the evidence was somewhat conflicting, but held that the business was carried on by the wife. The petitioning creditor had supplied goods to the shop for the purposes of the business, and the question which had to be decided was to whom was credit given, as it did not matter whom they thought was carrying on the business. The Court would therefore be loth to interfere with the Registrar's decision, who both saw and heard the parties. Mr. Justice Bigham said that in his opinion the husband after failing did what is common. He said to his wife, "You carry on business," to which the latter assented, and borrowed money to enable her to do so.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## Company Law.

### CHANCERY DIVISION.

April 25.

(Before BUCKLEY, J.)

*In re St. Neots Water Company.*

*Company—Winding-up—Company Incorporated under Special Act—Jurisdiction.*

This company was not registered under the Companies

Act, but was incorporated in 1897 under a special Act of Parliament (60 & 61 Vict., c. clxxxvi.) for the purpose of making and maintaining water works and supplying water within a certain district. The petitioners were judgment creditors for a debt of over £1,700.

#### JUDGMENT.

Mr. Justice Buckley, in giving judgment, said the case fell within the decisions of Mr. Justice Stirling in *In re Borough of Portsmouth, &c., Tramways Company* (1892, 2 Ch. 363) and Mr. Justice North in *In re Barton-upon-Humber and District Water Company* (42 Ch.D. 585), in which the jurisdiction to wind up companies of this kind was established. His Lordship said he did not agree with the contention that the latter case had been dissented from by the Court of Appeal in *Marshall v. South Staffordshire Tramways Company* (1895, 2 Ch. 36). It might be necessary to apply to Parliament in case a sale of the undertaking was required, but that objection was not considered by Mr. Justice North as standing in the way of a winding-up order. The usual winding-up order must be made against the company.

(22 Times Law Reports, 478.)

#### CHANCERY DIVISION.

April 25.

(Before BUCKLEY, J.)

*Re R. B. & Co., Lim.*

*Company Liquidation—Nomination of Liquidator—Allegation of Bias.*

A petition by creditors for compulsory winding-up, the company being in voluntary liquidation.

According to counsel's opening statement the company was incorporated in 1897, and dividends were paid down to the year 1903, but the petitioners, acting under the advice of an accountant whom they were nominating as liquidator, contended that these dividends had been paid out of capital, as had 10 per cent. depreciation been written off annually from machinery, &c., which was not thought too much under the circumstances, there would have been no profits to divide. The directors and voluntary liquidator claimed, on the other hand, that spinning machinery used in the business—that of wool factors—would last for fifty years, and so long as repairs and renewals were kept up out of revenue, as had been the case, the depreciation which had been allowed was ample. There was no reference to provision having been made for obsolescence.

Objection was taken to the proposed liquidator on the ground that, having expressed his views, he was of necessity biased, and could not act independently.

The directors decided at a meeting on the 15th February to wind up, on which date there was an overdraft of £6,000 at the bank, and two days afterwards the notices were issued to shareholders. In the meantime it was alleged the overdraft, which had been guaranteed by the directors personally, had been reduced to £1,200 by the forced sale of certain stock, for which acceptances had been given which the bank had received instructions not to meet when the bills became due on the 18th February. It was contended that this transaction would have amounted to a fraudulent preference in bankruptcy.

The matter was ultimately referred to Chambers for the appointment of some liquidator agreeable to both parties, it being arranged that the liquidator who had been acting should retire.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

#### CHANCERY DIVISION.

May 1.

(Before BUCKLEY, J.)

*In re Alfred Melson & Co., Lim.*

*Company—Winding-up—Absence of Assets—Debenture-holders Carrying on Business—"Just and Equitable"—Companies Act, 1862 (25 & 26 Vict. c. 89), secs. 79 (5), 91.*

This was a case of great importance in the law as to the winding up of joint-stock companies. It was established long ago, before the passing of the Companies (Winding-up) Act, 1890, that a winding-up order would not be made on a creditor's petition where it was shown that the petitioning creditor could not gain anything by the winding-up order. One of the most common of these cases was where the assets of the company were completely covered by debentures for an aggregate amount exceeding the value of the assets. So well settled was this rule that for some time past petitioners have been required to allege and verify the fact that the company has assets available. In a recent case before Mr. Justice Warrington—*In re Chic, Lim.* (1905, 2 Ch. 345), where, after a judgment had been obtained by creditors of the company, the debenture-holders had obtained the appointment of a receiver, who had carried on its business and incurred further liabilities—a winding-up order was made on the judgment creditors' petition, although the assets were more than covered by the debentures. In the present case the judgment was obtained last December, and in March of this year, there being then debentures charging the company's assets, a prior lien debenture for £1,000 was created. No receiver had been appointed, but the debenture-holders were in possession of the assets and were carrying on th

company's business. In these circumstances the judgment creditors, the Bradford Dyers' Association, Lim., presented a petition asking for the compulsory winding up of Alfred Melson & Co., Lim.

#### JUDGMENT.

Mr. Justice Buckley delivered judgment as follows:— This is a company which has a paid-up capital of £2,507 and a debt upon debentures—which constitute, I understand, a charge upon the undertaking—to the amount of £6,630. The petitioners are judgment creditors for a sum of £98 15s. 3d., in respect of which they recovered judgment against the company on December 1 1905. Of the debenture debt I understand £1,000 was borrowed upon the security of prior lien debentures in March 1906, that is to say, after the date on which the judgment had been obtained. The company say that if I make a winding-up order there will be nothing to wind up, as the debentures more than exhaust all the assets of the company. I will, for the moment, assume that is the fact and see how the matter stands. If that be the fact, it seems to me that, upon the evidence in this case, the company is not really in substance carrying on business at all, but that its debenture-holders are carrying on the business, although the company's name is being used; and in doing that they are putting themselves in such a position as that, in ordering goods in the name of the company, and incurring debts for which the company is liable, they are in the position of availing themselves of the law to which I called attention in *In re London Pressed Hinge Company* (21 *The Times* L.R. 322; (1905) 1 Ch. 576), and of being able to say that at any moment they can intervene by the appointment of a receiver and sweep away all the assets from the unsecured creditors. That seems to me to be a state of things which ought not to be allowed. Long ago, in the case of *In re St. Thomas' Dock Company* (2 Ch.D. 116), decided by Sir George Jessel in the year 1876, and in *In re Chapel House Colliery Company* (24 Ch.D. 259), decided by the Court of Appeal in the year 1883, the principle was adopted that a creditor who comes for a winding-up order must show that there is some expectation of obtaining payment, at any rate where other creditors oppose the petition and ask that the company may be allowed to go on. But those cases were decided long before debentures had reached their modern development. I do not think it was ever laid down that, when the

petitioning creditor came alone and no other creditors opposed, the Court was bound to refuse the order; but merely that there was a discretion in the Court, that the petitioning creditor was not entitled to an order *ex debito justitiæ*, and that the Court, in dealing with the matter, regarded under section 91 of the Companies Act, 1862, the views of the other creditors, and might refuse the order, although the creditor was unpaid. I do not think there exists in those cases anything which obliges me to say, particularly in the modern state of facts as regards debentures, that the Court is bound to exercise that discretion by refusing at the instance of the company to make the order, merely upon the ground that the order will not produce anything for the unsecured creditors. I think that, under the "just and equitable" clause of section 79 of the Act of 1862, I am entitled to say that a company conducted under such circumstances ought not to go on, and that there ought to be a winding-up order. It is said that the company has assets, but I am not satisfied on the facts that the company really advanced that as being the true state of the case. Upon its Balance Sheet of December 1905 there are shown assets to the extent of nearly £9,300, and debentures to the extent of £5,630. The further debenture debt of £1,000 has arisen since that date, and unless a particular item, "Overdraft of Mr. Melson, £3,787," is bad (and there is no evidence that it is bad), there would upon that Balance Sheet be assets for payment of something beyond what is payable to the debenture-holders. The evidence that there is not enough is to be found in certain paragraphs of Mr. Seal's affidavit. I am not satisfied that the order need be barren. I ought also to add this, with regard to the holding of the debentures. A Mr. Baring Gould holds £2,700 first debentures, £1,100 second debentures, £300 third debentures, and £500 prior lien debentures; £500 prior lien debentures are held by Mr. Paxton, and £1,400 debentures are held by Mr. Seal, the solicitor of the company. It is obvious in that state of facts that the persons carrying on this company are Mr. Baring Gould, and, to a smaller extent, Mr. Paxton and Mr. Seal, though whether that gentleman holds them in his own right I do not know. The persons substantially carrying on the business are not the company, but a limited number of individuals. In that state of facts I think the order ought to be made, and I therefore make the usual compulsory winding-up order.

(22 *Times Law Reports*, 500.)

## Law Reports.

### Accountancy and Auditing.

LIVERPOOL ASSIZES.

May 9, 10, 11.

(Before BRAY, J., and a Special Jury.)

**Smith v. Sheard.**

*Liability of Accountant—Audit at Request of Creditors—Defalcations by Employee—Claim for Damages.*

An action was brought by Mary Ann Smith, married woman, carrying on business as a manufacturing stationer in Liverpool under the style of Dickinson & Co., for damages for neglect in the audit of her books, against Theodore S. Sheard, accountant.

Mr. Rutledge stated that the plaintiff claimed damages for neglect and carelessness in the audit of her books, by means of which she incurred heavy losses consequent on frauds. The defendant denied that he was the auditor of her books, and that she sustained any loss through neglect on his part, and also that, if there was neglect, the plaintiff was guilty of contributory negligence; while further, the defendant counter-claimed for certain sums for work done, which plaintiff denied.

Mr. Shee, in his opening, stated that the allegation of neglect was that in consequence of the inefficient auditing of the books by the defendant, the late cashier of the plaintiff embezzled certain sums of money, amounting in all to about £700. Plaintiff had been in partnership with Mr. Dickinson, but on account of the latter overdrawing more than he was entitled to this partnership was dissolved in 1902, and a consultation with the creditors was decided upon. Mrs. Smith then found that Mr. Sheard had been acting as auditor to the firm, and she intimated that his services would be continued in this capacity. As a matter of fact, it was alleged that he not only undertook the auditing, but her affairs in regard to the creditors and the collection of debts. In December 1902 the plaintiff's cashier, who had since been prosecuted and who was now dead, began to make fictitious entries in the books and appropriate money from the business. When defendant audited the books and prepared a Balance Sheet in 1904 he made a charge of forty guineas, to which plaintiff demurred, remarking that she did not think the work had been done properly. Mr. Sheard replied that the consequence of such a statement would be very serious for one of them. The defalcations of the cashier were not discovered until April 1905, and it was contended that if the audit had been an efficient and proper one the misappropriations would have been found out much earlier, and the losses thus prevented.

Evidence was given in support of counsel's statement by the plaintiff.

Cross-examined by Mr. Horridge, witness stated that in order to save expense, and because of the confidence she reposed in the cashier, she did not instruct the defendant to audit her books in the way he had done in the time of Mr. Dickinson, and that consequently the Bank Book, Cash Book, and vouchers were not examined for eighteen months.

Miss Amery, in explaining the system of bookkeeping at the plaintiff's office, stated that the defaulting cashier collected accounts outside and gave receipts from a counterfoil Receipt Book, which she was unable to say was asked for by the defendant's representatives.

Cross-examined, witness said that everything was left by Mrs. Smith to the cashier. As far as she knew, Mr. Sheard never had the Counterfoil Book, the rough Cash Book, or the vouchers.

Walter Appleton, of London, representing a firm of creditors, stated that at a meeting of the creditors when Mrs. Smith took over the business it was agreed to give the plaintiff time to pay the debts on condition that Mr. Fosbrooke, the defendant's partner, took entire control of the books.

Arthur Whittaker, Chartered Accountant, Manchester, deposed as to the state of plaintiff's account books and the evidences of the partial audit which they bore. The question of what an audit was was a difficult one, but a generally accepted opinion was that it meant a comprehensive investigation of the books for the verification of the entries in order to arrive at a proper statement of the position of the client. He did not think there was any difference between an audit and a "complete audit," and without some understanding to the contrary an auditor must audit all the books. He maintained that the entries from the rough Cash Book into the general Cash Book, and from the original carbon counterfoils to the Summary Book, had not been checked as they should have been. Vouchers also should be asked for by an auditor.

Mr. Horridge said he did not dispute witness's evidence as to non-checking, the whole point being as to what were the terms of defendant's employment.

The question of amount, it was agreed between the parties, should be reserved for the present.

Witness, proceeding, stated that if vouchers had been asked for fictitious entries would have been discovered in the Cash and Purchase Invoice Books.

Cross-examined by Mr. Horridge, witness stated that his evidence had been given on the assumption that the defendant was employed to give an audit in the strict sense of the term. It was apparent in this case from the books that the defendant had not purported to audit in such a manner as to check the honesty of the servants. It was usual for an auditor to certify the accounts as "audited and found correct." Mr. Sheard had not done this. There was no necessity to ask for the counterfoils of receipts for



the purpose of posting the books and preparing a Balance Sheet only.

Two other witnesses were called for the plaintiff, whose case was then concluded.

Mr. Horridge, for the defence, argued that from the very first Mr. Sheard had taken up the position that he was never engaged to audit, and that he had never for one moment pretended to do so. He had only done the work of checking the books and making out a Balance Sheet in a way that was the custom amongst private firms. It was not intended to audit the books to check the accuracy of the entries or the honesty of the servants, but simply to take out a Balance Sheet which correctly represented the books. That was shown by the very fact that the defendant had never asked for vouchers and counterfoils. The arrangement when the partnership between Mrs. Smith and Mr. Dickinson was dissolved was that the books should be put on a proper system of double-entry, and balanced half-yearly. Mrs. Smith did not want her cashier checked, as she reposed the fullest confidence in him. He maintained that if the word "audit" had not crept loosely into a bill that action would never have been heard of. Mrs. Smith had constantly stated that she wished to save expense, and she intimated that it was only necessary to do sufficient to satisfy the creditors by putting the books on a better system and furnishing a Balance Sheet. Counsel proceeded to quote letters bearing on Mr. Sheard's engagement, and submitted that every document and inference was in favour of the defendant. The secret of that case was that Mrs. Smith had lost her money through her late cashier, and that she never made a bargain with Sheard to audit at all. The Balance Sheets were not signed or certified for the simple reason that an audit had not been made or had been intended to be made.

Mr. T. S. Sheard, the defendant, gave evidence. He said he had carried on business in Liverpool as a Chartered Accountant for twenty years. He emphatically denied that he had ever agreed to make a complete audit of the plaintiff's books or anything to that effect. If he audited accounts or Balance Sheets he usually gave a special certificate stating what he had done. If he was only instructed to take out a Balance Sheet he took the figures as stated in the books, and did not sign it.

Cross-examined, witness disputed that there was any discussion between himself and Mrs. Smith about it being a serious thing for her if her statement about his work were false. He was astonished when he was blamed for the non-discovery of the defalcations.

John D. Fosbrooke, defendant's partner, stated that in consequence of Mrs. Smith's anxiety to save expense until the creditors had been paid off, the arrangement was that he should only check the posting in order to enable him to balance. He denied that he had told Mrs. Smith that he had made a "complete audit" of her books. The word

"audit" had been put into the bill of charges by a clerk, and it should have been "auditing of posting." He did not ask for vouchers, because he was not making a thorough audit of the books.

Cross-examined by Mr. Shee, witness stated that it might have been less trouble if he had let the cashier do the posting, and if he (witness) had applied himself to checking the cashier's honesty, but witness was stopped by Mrs. Smith from doing that.

Mr. Sidney S. Dawson and Mr. W. C. Spencer, Chartered Accountants, deposed that it was the practice after making a thorough audit to sign the Balance Sheet or give a certificate. In this case, Mr. Spencer said, there was no evidence of vouchers, &c., having been checked. The work done by the defendant was not valueless, but was necessary for balancing purposes, and in the absence of fraud would have shown the assets, liabilities, capital, profits, and drawings of the partners.

In answer to Mr. Shee, witness said that the defendant's audit would be valueless for the purpose of detecting fraud.

Counsel having addressed the jury,

Mr. Justice Bray, in summing up, said: Gentlemen of the jury, I may have to occupy your time for a little in going into this matter, which is a very important matter. It is important for both parties; it is important for the plaintiff because she says that Mr. Shand has defrauded her of some £700, and that if the defendants had done their duty Mr. Shand would have been detected long before all that money was lost and she never would have lost the money. £700, of course, is an important sum. On the other hand, it is equally important for the defendant—not more important, but equally important for the defendant—not only because the sum is a very considerable sum, but because he is charged with having entered into a contract which he never performed or attempted to perform—that is the charge against him. It is a serious charge against professional men, and when Mr. Shee talks to you about disregarding the question of onus of proof, and asks you to look upon it as a matter of common sense, I ask you to look upon it as a matter of common sense. First of all, at law common sense and law usually agree, but it is law that the plaintiff must make out a contract, and a breach of that contract before she can succeed. But it is common sense too. One of you gentlemen some day might be sued by somebody setting up some verbal contract which you have never entered into, and you would think if an action were being brought against you—would not you think it was fair that when there are no documents proving what the contract was, if there are no documents it is a case that should be proved against you fully? Now the law says that, and common sense tells you the same. Now, gentlemen, as I have told you, this is an action for breach of contract, and it is admitted that the whole question turns

upon what was the contract, and therefore the simple question that I am going to leave to you is this: Did the defendants agree with the plaintiff to make her a complete audit? Is that what they agreed to do? That is what the plaintiff has got to prove to you, because it is common ground that if that was their contract they never performed it or attempted to perform it; because it is common ground again that a complete audit means having every item vouched for and every entry—every book brought up and every item vouched for—and, of course, it is common ground again that if every item had been asked to be vouched for and every book had been examined the defalcations would have been discovered; they must have been discovered. Therefore that is the question that you have got to try. Has the plaintiff proved to your satisfaction that the defendants agreed to make a complete audit? Now it is purely a question for you; it is not for me, it is for you; and any observations that I may make, except when I am dealing with a question of law, are observations which you can give just as much or as little weight to as you choose. Now I am bound to say that the first observation which occurs to me is this: It does seem to me a remarkable thing that if these people really did agree to make a complete audit that they should not have done it. It was to their interest to do it. There was no bargain as to price, and the more time they had to spend upon these books the more remuneration they would get, and you, gentlemen, know, of course, there is a profit upon every hour's charge that they make, and it was to their interest—to their profit—that they should make as complete an audit as possible, because that would take more hours and would mean more profit, and it does occur to me that that wants explanation, why the defendants if they had agreed to make this complete audit never did so. Now, gentlemen, that is an observation on the law; it is simply an observation that you will take notice of. Now, as I told you, the plaintiff has got to prove her contract. The contract, whatever it was, was clearly made about the beginning of 1903; that is common ground. Whether it was in December or January does not much matter; the defendants put it in January; the plaintiff does not give any actual time herself, except that it was about that time. Now first of all you have got to see what did the plaintiff say herself, and you have got to ask yourselves, is that true? If it is true, what does it mean? Or if it is not true, what was the contract? Now this is what she said: "Fosbrooke was Sheard's general manager, and he asked me what I was going to do about the audit. I told him 'I was going to make no change in anything.'" Now that is her own story, mind you, the story that she repeated more than once, which means, if one can understand it, it means you are to go on doing the work which you did before. Then she says, "I told him I was not going to

"make any change in anything, and knowing I had no knowledge of books I expected them to do all my books. 'I am not sure of the words I used. I said I hoped they would take special care, knowing that I knew nothing about books, and I was making no change at all. Fosbrooke told me he was going to take special care about the books, and he should want to make a few alterations. 'Mr. Shand was my head man; he was called in, and I told him to give every assistance to Mr. Fosbrooke.'" Now she is cross-examined, and Mr. Horridge wanted to see whether he was quite clear that he understood the contract—that according to her version they were to do what they had been doing before. The employment was the same, but they were to take more care. What I do not understand—the employment was continuous—they were to audit the books in Dickinson's time, but they told me they could not get at them. Now, gentlemen, of course that is her story. Now let us see what the contract was that was made. You have got to look at what had happened before, and therefore it is most vital to see what was the work they had been employed to do before. Now I must go right through that with you, but there cannot be a shadow of doubt, although it is for you to say that they were never employed to audit the books before and never did so. Now you will see. You know bills were sent in. According to Mr. Fosbrooke these bills were brought to the plaintiff—to Mrs. Smith—when she was making the arrangements for going on with the work at the time this contract was made in January 1903. Now the correspondence shows this, that the first time these defendants were employed by the firm of Dickinson & Co. was about March 1900, and they were employed for this reason. Mr. Dickinson—I suppose their position perhaps was a little critical—Mr. Dickinson wanted to know first of all what were the total annual sales; he wanted, secondly, the Balance Sheet made up to the end of the 31st of January 1898, so as to show what was the position between them as to capital. Apparently their arrangements were more or less vague as to capital, and they wanted to commence and see how much capital Mr. Dickinson had got in the business, and how much Mrs. Smith had got in it. That was the object with which they were employed. Now you get from the documents and from Mr. Sheard's evidence—not denied by Mrs. Smith—the common question. Now Mrs. Smith tells you, "Oh, I knew nothing of what was going on in Dickinson's time." Now we shall see that is not quite correct. She knew; she wanted to know as much as Mr. Dickinson where they were as to capital. Now we will see from the bills that were sent in what they were doing. Now, gentlemen, I will hand in the bills to you, so that you may follow them. I think the first of them—it is not here—gentlemen, you take those (bills handed to the jury). The first one is not here. I will give it to you

presently. "28th May 1901. For services rendered preparing schedule showing the total sales of your business from April 1898 to April 1900." You won't find that one here; I will hand it to you. "Preparing Balance Sheets at 31st December 1898 and 31st March 1900, and Profit and Loss Account for the eighteen months ending 31st March 1900, £42." Now you take that. Now I have read it to you it is perfectly clear from that that there was no audit; there is no pretence for saying that there was anything in the nature of an audit. Now the next is this. You have got the next one yourselves. It is No. 2. You will find these later ones are all misleading—the 31st January 1903—because they were not delivered until that time. "31st January 1903.—For services examining and balancing your Cash Book for the year ended 31st March 1901." Now again it is agreed that is not audit. Mr. Shee does not suggest that is audit. "Checking Ledger balances and preparing Balance Sheet at that date. Attending numerous interviews with Mr. Dickinson and Mrs. Smith, discussing affairs, and reporting as to cash drawings monthly, fifteen guineas." You know Mr. Sheard says it is quite plain from the correspondence that they discovered when they got out these Balance Sheets that Mr. Dickinson was apparently overdrawing, or drawing more than he should do, and was making the capital too small, and the result of what took place appears from a letter of May the 1st 1901, and that is a letter from Mr. Sheard after he had seen Mr. Dickinson and Mrs. Smith. "In confirmation of my interview with Mr. Dickinson and Mrs. Smith on Monday morning, I beg to recapitulate the arrangements that were then come to." Now you know Mrs. Smith talks a little about her knowing nothing of what was going on. She and Mr. Dickinson had met and had arranged what should be done. "(1) The Balance Sheet as at 31st December 1898 is to be taken as a basis of the partnership agreement, in accordance with which the capital therein shown is to be apportioned two-thirds to Mr. Dickinson and one-third to Mrs. Smith." Then Mr. Sheard had written some five days before that pointing out quite clearly that that Balance Sheet did not profess to be an audited Balance Sheet. The parties agreed that that should be so. "(2) Balance Sheet made out as at 31st March 1900, and the profit thereby shown for the previous fifteen months is also to be taken as correct. I am to proceed." Now this is what he had to do: "As quickly as possible to prepare a Balance Sheet as at 31st March 1901, and on the completion of same a further meeting will be held, when it will be decided whether such Balance Sheet should be adopted as correct. (4) From the 31st March 1901 the books are to be placed upon a proper system of double entry and balanced half-yearly. In future a rough Cash Book is to be kept, into which are to be entered full particulars of all payments and

"receipts, and the balance in hand is to be paid into the bank daily. With a view to carrying out the foregoing arrangements Mr. Fosbrooke yesterday interviewed Mr. Shand and discussed the future bookkeeping. I find several alterations in the system of bookkeeping will be necessary, as many of the present methods might be improved upon." There is something about Purchases, about Sales, about Allowances and Returns, and about Ledgers, and so on. I need not read that all to you. It points out the alterations that Mr. Sheard is going to instruct Mr. Shand to carry out so that the books may be properly entered up with double entry, so that he may be able to make Balance Sheets. Now the next thing that happens is this: There was a number of accounts owing, it being found that Mr. Dickinson was drawing all the money from Mrs. Smith's balance. There was sent an account of the drawings—the monthly drawings—and this is the form of that: "Dear Sir,—I beg to report that I have examined your Cash Book for the months of June and July, and that I find the drawings are as follows:—Mr. Dickinson so much, Mrs. Smith so much. I have also to report that the following cheques appear in the Bank Book, but are not entered in the Cash Book, and that a corresponding number of counterfoils in the Cheque Book are blank." Then follows a list of these items, and "Please let me know to what account these are to be debited, and oblige." Now that was the usual form, and that went on until September—about the middle of September 1902—when Mr. Dickinson left the office, and then the question arose, What was to be done? Mrs. Smith took the advice of a solicitor. She took advice, and the advice was to get rid of Mr. Dickinson, and accordingly that was done. Then, unfortunately, there were creditors who were pressing. What was to be done? The creditors had to be asked for time. The principal creditors were asked for time, and the proposal was that they should take bills for four, eight, and twelve months, so as to give Mrs. Smith time to turn round. Now we follow the accounts. The accounts say what work was done with reference to that. The next one we have got is 1901 to 1902. That is No. 3, I think, "For services examining and balancing your Cash Book for the year ended 31st March 1901, checking Ledger balances, and preparing Balance Sheet at that date. Attending numerous interviews with Mr. Dickinson, Mrs. Smith, and Mr. Wilson"—Mr. Wilson was Mrs. Smith's solicitor—"discussing affairs, and reporting monthly as to cash drawings, fifteen guineas." The next one is headed 1902. "For services examining and balancing your Cash Book for the nine months ended 31st December 1902, extracting Ledger balances, and preparing Balance Sheet at that date. Attending numerous interviews with Mr. Dickinson, Mrs. Smith, Mr. Wilson, and Mr. Duncan; discuss-

"ing affairs and reporting as to cash drawings, fifteen guineas." Now it is quite clear that up to that time their work did not consist of auditing; it consisted of examining and balancing the Cash Book, and ascertaining the cash drawings of the different partners, and preparing Balance Sheets, and I think in some cases the Profit and Loss—no, I think there was no Profit and Loss—preparing Balance Sheets, so that up to that time it is common ground, and it really cannot be disputed, and up to that time nothing had been done in the way of auditing. Now let me read again. That being so I ought perhaps to follow these up a little more. You know there was to be a meeting of creditors, and there was a meeting of creditors on the 22nd December. Now what took place at that time appears from the letter of the 24th of December, which was Mr. Fosbrooke's letter: "In reply to your letter of the 23rd I am pleased to hear"—Oh, this is a sort of circular letter sent, or at all events sent to one of the creditors, it may be to more. "In reply to your letter of the 23rd, I am pleased to hear that you will agree to the agreement," and so on. "Mrs. Smith wishes me to thank you on her behalf. Mrs. Smith regrets that she cannot send you cash for the dishonoured bill (£133 4s. od.), as she must treat all creditors alike. I may also inform you that Messrs. Fenner Appleton & Co.'s account is not only for a larger amount than yours, but it dates back three months earlier. Mrs. Smith proposes to take stock during the holidays, and I will then prepare a Balance Sheet made up to date, and submit it to you and the other creditors at another meeting in London early in the new year, when final arrangements can be made. In the meantime Mrs. Smith will pay you cash for any goods she may require." So that it is quite clear that at the meeting of the 7th there was no final arrangement. The creditors wanted, before they had a final arrangement, to see a Balance Sheet which Mr. Sheard was to prepare. He did prepare that Balance Sheet, and the meeting was held on the 21st of January, and attended by Mr. Sheard, not by Mr. Fosbrooke, because Mr. Fosbrooke was ill. Now then we will see what happened then, because there are letters which are relied upon by both parties. Now on the 23rd January Mr. Sheard sent round to these four principal creditors a circular letter. Now this is what is relied upon by Mr. Shee. "Since I had the pleasure of meeting you in London on the 21st instant I have seen Mrs. Smith, and she agrees to your suggestion that she should give you bills at four, eight, and twelve months from the 1st January instant for three equal instalments of your debt. She is also prepared to give an undertaking not to draw more than £2 10s. od. per week for herself until all these bills are met. She further agrees that I shall at the end of June next audit her books and report the result of my

"investigations direct to you. Will you draw upon her as above, or do you wish me to draw out the bills? Your kind reply will oblige." Now Mr. Sheard undoubtedly uses the word there, "Audit her books." Now what did that mean? There is an answer to that letter. The creditors, or one person on behalf of the creditors, Messrs. Fenner Appleton & Co.—that is the gentleman you saw—he answers that, and you will see how he construes it. "In reply to your favour we enclose bills at four, eight, and twelve months for the amount due to us up to December 31st last, which please get accepted and return to us. We agree to take a settlement of our account by means of these bills, solely upon the following conditions, and on the understanding that if they are not all fulfilled, or if there is a failure on the part of Messrs. Dickinson & Co. to meet any of these bills at maturity, then the whole of the unpaid portion of the debt becomes immediately due. The conditions are that Messrs. A. Cowan & Sons, Lim., Dickinson & Co., Lim., and Spicer Bros., Lim., agree to accept payment of their accounts on the same basis, and that Mrs. Smith does not draw for her own use more than £2 10s. od. per week until the bills are paid, and that you furnish us with a Balance Sheet every six months until the bills are paid." Now you see he does not use the word "audit," but says "furnish us with a Balance Sheet." That is his interpretation of the condition which was made. He said in his evidence that what was said was that Mr. Sheard should have full control over all the books. Well, I do not see how that can mean an audit—"complete control over all the books." It means they should have the direction of how the books should be kept. At all events, there is no word of an audit in that. Now that is how the matter stood, and, as I say, it is common ground that up to that date there had never been an audit by Mr. Sheard in the strict sense of the word, and all they had done was to go into the cash balance for the purpose of the drawings and to make out Balance Sheets. Now, that being so, you have to ask yourselves, What does this mean? and I am taking the plaintiff's version as true. You know the defendant and Mr. Fosbrooke deny it, but I am taking the plaintiff's version: "He asked me what I was going to do about the audit. I told him I was going to make no change in anything. I said, 'They know I have no knowledge of books; I expect them to do all my books.' I cannot be sure of the words I used. I said 'I hoped they would take special care, knowing that I knew nothing about the books, and I was going to make no change at all.'" Now you know Mr. Shee has put it to you. He says that is all very well, but this was a poor woman, and it was the duty of the auditors to make it plain to the poor woman, but that is not so. If the auditors directly deceived her that would be one thing. It is not their duty. She was telling them—instructing them—

what they should do. It is her duty to make it plain to them what they were to do, not his duty, and I must tell you that Mr. Shee's suggestion that it was the duty of the auditors to make it perfectly plain what they were going to do, and what they were not going to do, was not good law; and it is not good sense, gentlemen. Mr. Shee talks about a poor woman, but you must recollect that this is a lady who has been carrying on this business and managing part of it, and if women go into business they must be treated as business people; many of them are more capable than men to understand business matters, but they cannot come before you being business people in this way and say, "Oh, I knew nothing; it was the duty of the auditors to make it plain to me." She was giving them instructions what to do; it is for her to show what she instructed them to do and what they agreed to do. Now you must take that from me, and you must take it from me that Mr. Shee's observations on that point are not good law. She has got to make out what the contract was. Of course, if they intentionally mislead her that would be another matter altogether, but now look what is was. They were auditors. They wanted to be employed. Naturally their wish would be to be employed to do as much work as possible, but they have no right to do more work than their contract instructed them to do, and if they come here and ask to be paid for a complete audit Mrs. Smith would say, "I never asked you to make a complete audit. I asked you to take special care of the books." That is quite true. They were to give very careful instructions how the books were to be kept, and Mr. Shand was sent in for that very purpose. Now you have to take the contract as alleged by Mr. Fosbrooke, because he was the person who attended the interview, and it is he whose evidence rather than Mr. Sheard's that you have to consider. Mr. Fosbrooke said, "We had done no auditing 'up to that point at all. I had not attended myself the 'January meeting, but I went there with these accounts, 'and then the question arose what was to be done. There 'were no instructions to me to do anything more than this 'Balance Sheet which I had been credited to do, and the 'creditors required me to do, but it was discussed what 'should be done and what postings I should check and 'what I should not. To begin with, I said 'There are a 'number of old accounts due. They ought to be collected 'by Mr. Shand. It will take a great deal of his time; 'you had better get him an assistant bookkeeper,' and 'accordingly Mr. Fosbrooke arranged what Mr. Shand 'should do in the way of checking and posting, and what 'this lady—she was not called in until some time afterwards—what she should do, and not a word was said 'about auditing at all.'" Now, as I say, you have got to ask yourselves first of all, does the plaintiff make any case upon her statement? If she does, is she telling the truth,

or is Mr. Fosbrooke telling the truth? You know what happened afterwards. We know that from that time right up to August 1904 they did not attempt to make a complete audit. How is that to be accounted for? If they were instructed—Mr. Shand was there—Mr. Shand was present at this conversation apparently, or the early part of it—how was it that no remonstrance was ever made to them for not having done the audit? Of course, it may be said that Mr. Shand was going to swindle Mrs. Smith, and therefore it was not to his interest to do so, but certain it is they have never attempted to do the work of auditing. Mr. Whittaker pointed out a number of things that they did not do. They never asked for the counterfoil Receipt Book, or for the rough Cash Book, to compare it with the Cash Book, or that a single item should be vouched from beginning to end, which is important. Of course, you have to consider the question of the honesty or dishonesty of Mr. Shand. Now, again, you have to look, according to Mr. Fosbrooke, who said Mrs. Smith pointed out again and again to him that she wanted the expense brought down as much as possible. Could not Mr. Shand do this, and could not Mr. Shand do that, and it was arranged that Mr. Shand should do this and that—certain things to save time and money. Does that seem reasonable, to say that Mrs. Smith was a reasonable woman? They never dreamt of Mr. Shand being dishonest. He had been in their service some time, and it was never dreamt of. All that she wanted was such a Balance Sheet as would satisfy the creditors, and they were not going to be satisfied with Shand's Balance Sheet, and they got an accountant's Balance Sheet. That was the object of the employment. That went on apparently without much important happening until July 1904. Now apparently they had no instructions to go beyond the second Balance Sheet. The creditors were paid off by the end of March 1904. The creditors were paid off, and therefore there was no necessity, as far as the creditors go, to have the expense of any further Balance Sheet, and now come some very important matters about this month. Now the first thing is letters that have passed of July 1904. Now it is exceedingly difficult to understand what these letters were. One must remember that at this time Mr. Shand—the writer of these letters—had commenced his defalcations, and they had been going on for some months—they had begun, I think, about a year before this, and apparently it is common ground. Mr. Fosbrooke had told Mrs. Smith that he had noticed that Shand smelt of drink, and therefore there might have been a little friction, and apparently there was some accountant whom Mr. Shand rather wanted to be brought in. Now this is written by Mr. Shand: "We must 'ask you to push on with our Balance Sheet to March 31st '1904. The original arrangement with you was that the 'Cash and Bank Books were to be balanced and audited

"monthly. We should be pleased if you will see that this arrangement is carried out in the future." Now that is not an audit at all. It was the Cash Book and the Bank Books that were to be compared. "The original arrangement with you was that the Cash and Bank Books were to be balanced and audited monthly. We should be pleased if you will see that this arrangement is carried out in the future." Now that arrangement had been made in Dickinson's time, and was utterly absurd now—utterly absurd. Now this is Mr. Sheard's answer: "In reply to your letter of the 15th inst., I am proceeding with the Balance Sheet to March 31st, and hope to hand you the result shortly. I should have completed my work before now if there had not been so many errors, discrepancies, and omissions in the books, and in any case I am informed that the stock will not be ready until next Wednesday, so that it would have been impossible to complete the Balance Sheet earlier. I note that you wish the Cash and Bank Books to be audited and balanced monthly, which shall have attention, but this is the first intimation I have had that you wished the arrangement which was made in Mr. Dickinson's time to be carried out after his retirement. Of course, to do this it will be necessary for the Cash Book to be written up and balanced monthly, which has not been done in the past." Now there was no answer to that. The defendants rely upon that as showing that this was an intimation that there was no complete audit going on. Well, it is very difficult to see whether what they were complaining of was that they had not been done monthly, or that they had not been done at all. It is very difficult to understand those words. The next is August 16th: "Dear Sirs,—I beg to advise you that I have got out a Trial Balance to 31st March of your books, and that they do not balance by the sum of £19 15s. 6d." That is a Trial Balance Sheet. I daresay, gentlemen, you know it is the first attempt at a Balance Sheet that is given. "As the books have not been kept in the manner I instructed, and as I have had to make a number of entries to balance accounts ruled off in error as settled, it appears to me that it will take a considerable time to find the errors and balance the books. I have already discovered nearly 100 single entries and mistakes amounting to £70. I shall be glad of instructions as to whether you wish me to balance the books or to write the amounts off." Now what Mr. Fosbrooke says to that is, "If I had been an auditor that would have been a perfectly ridiculous letter for me to write, because if I was an auditor I would have to go through every figure. If, on the other hand, my object was to make a Balance Sheet, why first it was for my employer to say whether I ought to clear up this discrepancy of £19 15s. 6d." Now what do they say? Of course, it might be said they ought to have said: Why, you have got to audit, and if

you have got to audit there cannot be any letters of credit. You must audit and find the actual figures. Then the next letter is: "We are in receipt of your letter of the 16th inst., and note that you are unable to balance our books by the sum of £19 15s. 6d., and to save further expense you had better write the amount off." Now that is relied upon very strongly by the defendants as showing Mrs. Smith's object was at that time to save expense as much as possible. She wanted to have a Balance Sheet which would show her position, but it did not matter to her whether it was £50 one way or the other. Well then, the letter goes on and disputes the suggestion of Mr. Sheard that they had been making errors and mistakes in their books. They say they have not. They say they have been doing nothing of the sort. "We believe there is a balance due to you, and will feel obliged if you will send in a statement of particulars to enable us to arrive at a settlement, after which we can go into the matter of fresh terms." That means the fresh terms will settle up for the old. We will then consider whether we shall employ you or not to go into the accounts of the 31st March 1905. Now on the 19th, and before the Balance Sheet comes, there is an interview, and at that interview there is a conversation, as to which the parties do not differ very much. It is quite clear it did take place. On the 19th, before the accounts had been sent out, in which Mrs. Smith asked, "What is the amount; what are you going to charge me?" and he said, "Well, if I charge according to the hours employed it will come to something like 60 guineas." "Oh," said she, "that is a great deal too much," and he said "Perhaps it is too much. I shall charge you 40 guineas." "Oh," she said, "that is too much," and he said "Oh, well, I cannot reduce it to less without seeing Mr. Sheard." They both agree that that took place about that time, and it is fairly common ground that that took place. And, further, this took place: Mrs. Smith says herself, "I have asked him the terms for a perfect audit." Now the letter goes on: "As stated in our interview yesterday, I shall be pleased to undertake the complete audit of your books, and to furnish you with a Profit and Loss Account and Balance Sheet annually for the future at the following fees, provided the bookkeeping is carried out under my supervision and according to my instructions: If one set of books is kept, 30 guineas per annum; if two sets of books are kept, 40 guineas per annum. These amounts would also cover the cost of checking the Cash Book and Bank Book monthly, if you wish it done." Now, gentlemen, there was no answer to that, or the only answer was—Yes, there was an answer: "We are in receipt of our Balance Sheet to March 31st 1904, together with your letter, which will have our attention in the course of a few days. Your bill of costs for periods ended 30th June 1903 and 31st March 1904 we consider excessive, and o"

"Mr. Shand will see you on this matter, after which we can 'go into the matter of future charges.'" Now, gentlemen, it is a remarkable fact that the defendants never were employed after that to go into the matter. Now that seems of importance. You know if Mrs. Smith was so anxious to see whether her servants were being honest or dishonest there was exactly the same necessity for a full and complete audit then as at any time. Instead of that she never makes any reply to that letter, and never employs the defendants again until after Shand's defalcations are discovered, so that Mrs. Smith—who was so eager, as suggested, to have everything and a complete audit made—had no audit, no Balance Sheet, or anything during that time until Shand's defalcations were discovered. Of course, she had had a Balance Sheet up to a certain time because of the creditors. As soon as that was removed she does not seem to have wanted anything at all. You must ask yourselves how does that bear upon the case. Does that look as if she wanted to spend as much money, or to spend a considerable amount of money, in Balance Sheets and auditing and complete auditing or not? Now the next thing that happens after these orders is a suggested interview, at which Mr. Sheard is present and not Mr. Fosbrooke, when Mr. Sheard presented his accounts and required payment. The accounts, by-the-by, were sent on the 20th August, and were acknowledged on the 22nd, when Mr. Sheard was present. Now it does not seem to me that that is an interview of much importance. It took place afterwards. It took place after all the work had been done, and now they have no effect one way or the other upon it. Mrs. Smith's version, corroborated by the bookkeeper, is this, that she said, "Mr. Shand tells me you have not done your work properly," and that Mr. Sheard said, "That is a very 'serious thing. If it is true, it is a serious thing for my 'clerks. If it is false, it is a serious thing for you. Be 'good enough to put your complaint in writing.'" "Yes, I will," says Mrs. Smith. Those are Mrs. Smith's own words, "And I told Shand to do it." But it is quite clear that Shand never did do it. It was upon that that Mr. Shee put in letters of August 16th and August 17th, as if that would affect it, but that will not do. The accounts had not been delivered at that time, and it is quite clear that that interview must have taken place a great deal later than August, when they were pressing for payment. Now these accounts were sent in. Now we must come to these accounts, because it is on these accounts that the plaintiff lays the greatest reliance, and there is no doubt that that account uses the word "audit." There is no doubt about it. Now it is said that the word was used in a loose sense, and they must have known perfectly well. They said: "We have never been pretending to audit in the full sense 'of the word'; but there it is, and it is a fact in favour of the plaintiff as against the defendants. It is a great point made by Mr. Shee, and you must form your own opinion upon it. Is it an admission that they had agreed to make a complete audit of the books, and had not done so, or is it a loose expression just saying what they have done? 'For services opening books at 1st January 1903; auditing 'same for six months ended 30th June 1903; preparing

"Profit and Loss Account and Balance Sheet at that date, 'and writing up Private Ledger, £21.'" That is for the first six months. The next is, "Auditing the books for the 'nine months ended 31st March 1904; preparing Profit and 'Loss Account at that date and Balance Sheet at that 'date, and writing up Private Ledger, £21.'" Now, what Mr. Horridge says as to that is that they used a loose expression, and that is the whole origin of this action. She consulted accountants and other people, and they said, "You have got a case, because in their own bill they put 'down 'audit.'" Now you have to decide. You have heard Mr. Horridge upon it, and you have heard Mr. Shee. That is the matter. It is not the contract; it does not pretend to be the contract. You have to see what the contract was that was made in January 1903, and by looking properly at all the correspondence, and certainly at these accounts, you see what they agreed to do. Well, they squabbled for some time about these accounts, and so on. There are several letters about mistakes on one side and the other, and so on. Apparently Mrs. Smith was dissatisfied, and it was quite plain she was dissatisfied with these bills, and that they were too much; and observe that at this time Mrs. Smith, according to her story, knew that the defendants had not done their duty. Now what does she do. She gives bills in January 1905—gives two bills, one payable in May and the other payable, I think, in September, and when the May bill becomes due she asks that it may be renewed. It is renewed, and she pays it, and it is only when proceedings are threatened upon the second, which became due in September, that then she formulated, so to speak, the counterclaim which she has brought. Now the discrepancies were found out. The defalcations were found out in April 1905. Now Mrs. Smith, according to herself, then knew how badly she had been treated apparently by the defendants, and what does she do? Who does she employ—who does she employ to make out the accounts to show these defalcations? She employs the defendants again for that purpose, and you have to ask yourselves what light that throws upon it. According to her she knew that her audit had not been properly done, and that she had suffered by it, and she employed the very people again, and she never formulated a claim against them by any writing so far as we have got. If she is right and she has got a good cause of action against them, she never does that until they press her for the £21 in October, several months afterwards. She said, "Oh, the reason is I did not want to go to law; I had not 'money to spend in law," and she seemed to be advised by her solicitors and accountants, and did not take any steps. But when this claim is made she does, and that is how the matter rests. There are a number of matters you have heard them discuss by counsel on either side again and again. I will only remind you what you have to say. You have to say whether or not it is proved to your satisfaction that the plaintiff instructed the defendants and the defendants agreed to make a complete audit. Well, I think there is only one other matter that I omitted, and that is an important one. These Balance Sheets and Profit and Loss Accounts that were sent in do not contain any signa-

ture, or any certificate by the accountants such as usually appears—"Audited and found correct." Now you heard evidence about that. Mr. Whittaker went so far as to say that because there was no such certificate it must be presumed there was not a complete audit. That, I think, is going a little far. The other witnesses said—the plaintiff's witnesses as well as the defendant's—that when we have audited that is a certificate that we put on, and the inference, if an inference is to be drawn—as they were not put on—is that there was not a complete audit. Gentlemen, you must judge for yourselves. It is an observation in favour of the defendants that they never put it on, and they would have put it on had they been employed to audit. Therefore it all comes back to this question. You have got to consider—you have to look at the plaintiff's account and what her instructions were—whether the instructions were for a complete audit or not; and if they were, do you accept her account or Fosbrooke's account? According to his account it is quite clear that the instructions were for something different. Now you tell me upon this point whether you find for the plaintiff or for the defendant. If you are satisfied that the agreement was for a complete audit, you will find for the plaintiff; but if you find that has not been proved, then you will find for the defendant. We may have to consider hereafter, either you or me, the question of damages, but we will not consider that at present. I will ask you to give your finding first upon the question I have put to you.

Mr. Shee: My Lord, may they have the reference to the Ledger with regard to these accounts?

Mr. Justice Bray: What reference?

Mr. Shee: Hodgson and Hill.

Mr. Justice Bray: Mr. Shee, I asked you before, and you said "No."

Mr. Shee: All right, my Lord. I agree.

The jury retired to consider their verdict.

The jury having returned,

The Associate: Now, gentlemen, have you agreed?

The Foreman: We have.

The Associate: How do you find—for the plaintiff or the defendant?

The Foreman: We find that at the creditors' meeting in London there was a distinct understanding that there was to be a complete audit.

Mr. Justice Bray: You know, you have used the words, gentlemen, that there was a distinct understanding. You know, that looks to me a distinct understanding is not an agreement. Do you find that there was an agreement for a complete audit?

The Foreman: That is so.

Mr. Justice Bray: You find that there was an agreement for a complete audit?

The Foreman: Yes; that is so, my Lord.

Mr. Justice Bray (to counsel): What do you say about damages?

Mr. Lindon Riley: What I should have liked was an answer to the question as to whether there was a contract between the plaintiff and the defendant for a complete audit.

Mr. Justice Bray (to the jury): That is what you find?

The Foreman: Yes, my Lord.

Mr. Justice Bray: Just let me have the words—what you have got down, you know, because, you see, I want to be sure. (Examined paper which was handed to him.) Oh, that will not do.

The Foreman: Well, we will retire again, my Lord.

Mr. Justice Bray: No; that will not do, gentlemen. What I must ask you—you must be really careful about this, that contract at the creditors' meeting in London—well, I must tell you that is not the contract; the contract relied upon is the contract made between the plaintiff and Mr. Fosbrooke. I read you the evidence about it. A contract at the creditors' meeting would be a contract between somebody else; that is what you have got to find, you know. I read you the words, you know, and you must go back please, and find, one way or the other, whether that contract is made. That is all I am leaving to you. I am not leaving to you any question of the creditors' meeting at all.

The Foreman: It is very difficult to go past the London meeting, my Lord.

Mr. Justice Bray: But you have got to find it one way or the other; the plaintiff has got to satisfy you that the contract was made. Let me have what you have written down.

Mr. Shee: I understand that the jury do first answer the question as to whether there was an agreement or not.

Mr. Justice Bray: Well, Mr. Shee, you shall look at it, and you shall have a copy of it, and you can see what you think of it.

The jury again retired, and upon their return

The Associate: Now, gentlemen, have you agreed?

The Foreman: We have.

The Associate: Well, how do you find?

The Foreman: For the plaintiff.

Mr. Justice Bray: You find that there was a contract made on that occasion?

The Foreman: Yes, my Lord.

Mr. Justice Bray: Very well. For a complete audit?

The Foreman: Yes, my Lord.

Mr. Justice Bray: Now then, Mr. Riley, what about the question of damages?

Mr. Horridge: My Lord, I should think the best way to do would be to refer that to one of our friends to deal with, because questions may arise which are difficult with regard to it, because, if your Lordship understands, it will take up time.

Mr. Justice Bray: Well, Mr. Shee, what do you suggest? Of course, strictly speaking, you are entitled to have it decided by the jury, if you desire.

Mr. Shee: No, my Lord. I think that is a reasonable suggestion. We might agree upon somebody and mention him to your Lordship.

Mr. Justice Bray: Very well then, I will discharge the jury. You are content that the jury be discharged, Mr. Horridge?

Mr. Horridge: My Lord, I think there is no other question for them.



The Associate: Then I will formally discharge them.

Mr. Justice Bray: Then, gentlemen, you are discharged from further attendance at these assizes.

Mr. Horridge: Well, I should think that probably the best plan would be for whoever goes into the question of damages to report to your Lordship.

Mr. Justice Bray: Well, then, you know you had better agree who is to act, or, if you cannot agree anything, that I should try it—that will be the best way. You see, you have discharged the jury.

Mr. Horridge: Certainly, my Lord.

Mr. Justice Bray: Well, somebody will have to try it. If you do not agree—what do you say, Mr. Shee? Will you agree?

Mr. Shee: I should prefer that we refer it to one of our brother barristers.

Mr. Justice Bray: Well, if you do not agree, what is to happen?

Mr. Shee: I do not think we shall disagree. The question is there are so many. Very well, we can arrange that.

Mr. Justice Bray: Very well.

## Bankruptcies and Insolvencies.

### KING'S BENCH DIVISION.

May 3.

(Before BIGHAM, J.)

*In re Pilling; ex parte Chapman.*

*Bankruptcy—Practice—Motion by Foreigner to Exchange Proof—Security for Costs—Jurisdiction—Discretion.*

Madame Katharina de Kohnle had given notice of motion for an order to expunge the proof of David Chapman in the bankruptcy of J. R. Pilling, or alternatively for a declaration that she was entitled to the benefit of the proof and to the debt thereby claimed. This was an application that Madame de Kohnle might be ordered to give security for costs in the sum of £20. She was an Austrian, and had in August 1905 described herself in an affidavit as of an address in Bavaria, but then of a hotel in London. She was at present, however, in Constantinople. It was alleged in the evidence that she had no residence or place of business or property in this country.

F. Whinney, in support of the application, contended that Madame de Kohnle was in substance seeking to recover property by expunging an existing proof, and that the proceedings were therefore in the nature of an action in which she ought to be required to give security for costs. *In re Semenza* (63 L.J. Rep. Q.B. 278; 1894, 1 Q.B. 15) did not therefore preclude the making of the order for the giving of security.

### JUDGMENT.

Bigham, J., said that there was no doubt that the Court had jurisdiction to make the order, and it would be unfortunate if it had not. It was, however, a jurisdiction which ought not to be exercised without good reason, and such did not

exist in the present case. His Lordship thought it very improbable that any costs which Madame de Kohnle might be ordered to pay would not be recovered, and she ought not, therefore, to be ordered to give security.

(L.J. 337.)

## Company Law.

### CHANCERY DIVISION.

May 10.

(Before SWINFEN EADY, J.)

*In re Perth Electric Tramways, Lim.; Lyons v. Tramways Syndicate, Lim.*

*Company—Debentures—"Issue"—Agreement to Issue Debentures as Security for Loan.*

This was a special case raising a question of considerable importance as to what constitutes the issue of debentures by a company. The Perth Electric Tramways, Lim., had by a trust deed assigned their assets and property to trustees to secure, *inter alia*, a series of 500 second debentures of £100 each, of which 360 had been issued. The directors passed a resolution for borrowing £2,000 on the security of 21 further debentures of the same series, and that number were accordingly signed and sealed, and were deposited with the company's bankers, the Union Bank of Scotland, with whom an agreement for the loan had been made. No name of any holder nor any date was inserted, nor were the debentures registered in the name of the bank. The debentures were in the form set out in the schedule to the trust deed, in which it was specified that each debenture of the series was to be under seal and to be issued to a person to be specified therein as a creditor for £100 and as the person to whom or to other the registered holder thereof payment was to be made by the company, and the names, addresses, and descriptions of the registered holders were to be entered in a register which was to be kept by the company. The loan was in due course paid off, and the 21 debentures were returned to the company. The directors subsequently issued six of them to the defendant syndicate without resealing them, and retained the remaining 15, intending to issue them also to future applicants. The company had no power to reissue debentures which had been paid off. The present action was brought by a person holding a debenture of the same series, and the principal question was whether by reason of the transaction with the bank the 21 debentures had been issued and discharged or otherwise so affected as to be no longer capable of forming a charge upon the property and assets of the company.

### JUDGMENT.

Mr. Justice Swinfen Eady, in giving judgment, observed that no separate point was raised as to the six debentures held by the syndicate, and the real question was whether the company have power to issue any of the 21 at the present time. The company claimed that these debentures never were issued to the bank, but that the first issue as to the six was to the syndicate, whilst the remaining 15 had up

to the present time never been issued at all, and could, therefore, now be issued by the company. The short point to be determined on the special case was whether the transaction with the bank amounted to an issue so that the 21 debentures were spent and could not now be reissued. Now it was pointed out by Mr. Justice Chitty in *Levy v. Abercorris Slate and Slab Company, Lim.* (4 *The Times* L.R. 34; 37 Ch.D. at p. 264), that "'issued' is not a technical term; it is a mercantile term well understood." He would consider what the position of the bank was. There was a resolution of the directors to borrow on the security of second debenture bonds, and then the 21 bonds in question were signed and sealed and left blank as to date and name, and these 21 sealed pieces of paper were deposited in the bank. In his Lordship's opinion that gave the bank an equitable charge. There was an agreement that they should have a charge, and in equity they had a charge on these bonds. If the bank had not been repaid and the company had gone into liquidation the bank would have been entitled to prove and to receive the full amount. They had a valid equitable charge on these debentures, and in the language of Lord Justice Stirling in *In re Tasker & Sons, Lim.* (21 *The Times* L.R., at p. 737; 1905, 2 Ch., at p. 598), "If no repayment had been made to" [substituting in the present case "the bank"], "and the debentures had remained in their hands, they would have been entitled to prove in the action and to receive dividends on the full nominal amount of the debentures in their hands *pari passu* with the other debenture-holders until they received in full the principal and interest due to them. This right was established by the Court of Appeal in *In re Regent's Canal Ironworks Company* (3 Ch.D. 43). It was there decided that a company may issue or deposit debentures by way of collateral security for money lent, and that the holders of other debentures of the same issue have no equity to prevent such a bargain from being carried into effect." If they might so deposit debentures validly issued, they might equally agree to deposit them, and in *In re Strand Music Hall Company, Lim.* (3 De G. J. and S. 147), showed that effect might be given to such an agreement. As Mr. Justice Buckley said in *In re Geo. Routledge & Sons, Lim.* (1904, 2 Ch. at p. 480), "If there is a contract that a person is to have a loan on the terms that the lender is to have a binding security, and he does not get that which he contracted to have, he has the right to be placed in the same position as if he had got it." In other words, there was a contract here giving these debentures as a security—a valid contract to issue debentures, and that, in the contemplation of equity, amounted to an issue. The debentures had now served their purpose as a security for the loan, which had run its course. Under these circumstances, his Lordship was of opinion that the transaction with the bank amounted to an issue, and that, as the company had no power to reissue debentures which had once been issued, they were not in a position to reissue any of the 21, and that the six issued to the syndicate had not been validly issued. This followed the decisions in *In re Geo. Routledge & Sons, Lim.*, *In re Tasker & Sons, Lim.*, and *In re Strand Music Hall Company, Lim.*

(22 *Times Law Reports*, 533.)

## CHANCERY DIVISION.

May 15.

(Before BUCKLEY, J.)

*In re G. J. Tilling & Sons, Lim.*

*Company Dividends out of Capital—Liability of Directors to refund to Shareholders who have received Dividends challenged.*

This was a summons by the liquidator in the voluntary winding-up of the company, seeking to make Mr. Tilling, the managing director of the company, liable for dividends paid out of the capital of the company. The company had been flourishing down to 1901, and dividends at 5 per cent. had been paid to the first preference shareholders twice a year, and before the Balance Sheet had been issued. In July 1902 and January 1903 dividends amounting together to about £320 were paid, as to £234 to the first preference shareholders, and as to the balance of about £86 to some second preference shareholders. It turned out that for the year 1902 a loss was made in trading, with the result that the £320 was paid out of capital. In 1904 the company went into liquidation, but all the creditors had been paid 20s. in the £, and there was enough in hand to pay the costs of the winding-up and the liquidator. Moreover, the first preference shares were preferential as to capital as well as dividend, and the holders of them were entitled to all sums recovered on the present summons, unless it should be determined that second preference shareholders whose shares, it was said, had not been validly issued were entitled to come in as creditors.

Mr. W. F. Hamilton, K.C., and Mr. K. G. Metcalf, for the liquidator, asked for an order for repayment of the £320 to be made without prejudice to the respondent's right, if any, to recover the dividends from the persons to whom they had been paid.

Mr. Frank Evans, for the respondent, said that, if the respondent paid the amount, the persons who would receive the bulk of it would be the first preference shareholders, who had already received the amount in the shape of dividends; and he cited the observations of Lord Justice Cotton in *Flitcroft's case* (21 Ch.D. 519, 536), that if the company were suing for the purpose of paying over again to the shareholders what they had already received, the Court would not allow it. Those observations, although commented on by Mr. Justice Wright and the Court of Appeal in *In re National Bank of Wales* (1899, 2 Ch., 629), could not be regarded as overruled, having regard to what was said in the House of Lords when the case of the *National Bank* was there under the name of *Doucy v. Cory* (1901, A.C. 477).

### JUDGMENT.

Mr. Justice Buckley said he did not consider that the authorities required him to order payment of the amounts paid for dividends if those amounts were to be paid over to the persons who had received the dividends, and he made an order for payment only of so much of the £86 as had been received by such of the second preference shareholders as

were not also holders of the first preference shares, with liberty to restore the summons within a limited time if the second preference shareholders established their rights as creditors. There would be no order as to costs.

(Times.)

#### CHANCERY DIVISION.

May 15.

(Before JOYCE, J.)

#### **Foster v. Coles and M. B. Foster & Sons, Lim.**

*Company—Preference Shares—When entitled to Cumulative Dividend.*

This was a motion by the plaintiff, who was an ordinary shareholder in the defendant company, for an injunction to restrain the company from applying profits earned in 1905 in or towards the payment of a dividend to their preference shareholders for the six months ended December 31 1904. The object of the application was to have it determined whether the holders of preference shares in the company were entitled to a cumulative or only a non-cumulative preferential dividend. It appeared that M. B. Foster & Sons, Lim., was originally formed in 1890 to acquire and carry on a business theretofore carried on under the style of M. B. Foster & Sons. In 1895 the company was reconstructed, the undertaking being transferred from the old company to the defendant company. The object of the reconstruction was—(1) the reduction of capital by the cancellation of 5,000 preference and 1,000 ordinary shares, and by the writing down of the ordinary shares from £10 each to £4 each; and (2) the reduction of the dividend on the preference shares from £6 per cent. to £5 per cent., and the conversion of such dividend from a cumulative to a non-cumulative dividend. By Clause 5 of the memorandum of association of the old company the capital was declared to be "£500,000 divided into 21,000 preference shares of £10 each, carrying a cumulative preferential dividend of 6 per cent. per annum, and priority of repayment in respect of capital in the event of liquidation of the company, and 29,000 ordinary shares of £10 each." Article 94 of the original articles of association provided that "The net profit from time to time available for distribution as dividend shall be applied first in payment to the holders of the preference shares in the company for a cumulative preference dividend at the rate of £6 per cent. per annum, and, secondly, and subject thereto, in payment so far as the balance will extend of a dividend on the ordinary shares of the company." Article 95 was as follows:—"The dividend so declared shall be payable on all shares subject to the rights of the holders of shares created or raised under any special arrangement as to dividend in proportion to the amount of capital for the time being paid up in respect of such shares"; and article 96 provided that "the directors may at any time during the current year divide among the

"members in proportion to their shares such a sum or sums out of the business of the company as they may think fit in anticipation or on account of the annual dividend which may be declared under the provisions of the last preceding article." By Clause 5 of the memorandum as altered for the purpose of the reconstruction, the capital was declared to be £300,000, divided into 16,000 preference shares of £10 each, carrying a preferential dividend of 5 per cent. per annum and priority of repayment, &c., and 35,000 ordinary shares of £4 each. Article 94 was altered by striking out the word "cumulative" before the word "preference"; in other respects the material articles were unaltered. In this state of things the question had arisen whether, notwithstanding the omission of the word "cumulative" from the memorandum and articles, the preference shareholders were not under the existing instruments still entitled to have arrears of unpaid dividends paid out of the profits earned in subsequent years before anything was paid to the ordinary shareholders. The hearing of the motion was, by consent, treated as the trial of the action.

Mr. Younger, K.C., and Mr. W. P. Baildon appeared for the plaintiff, and contended, on the authority of *Staples v. Eastman Photographic Materials Company* (1896, 2 Ch. 303), and other cases, that the preference shareholders were not entitled to a cumulative dividend.

#### JUDGMENT.

Joyce, J., without calling on counsel for the defendants, said that the proper mode of determining this question was to consider, in the first place, the language of the instruments before going to cases which had been determined on similar instruments. Taking, in the first place, Clause 5 of the memorandum, *prima facie* the reference there to a preferential dividend meant a cumulative preferential dividend. Then, going to article 94, suppose that, after the reconstruction of the company, nothing had been available for dividend until the third or fourth year, and then suppose there had been a net profit available, how would it have to be distributed? In his Lordship's opinion it would have to be applied in payment, first, of a preference dividend of £5 per cent. per annum from the commencement of the company. There was nothing in that article to show that the preference dividend was only to be for the particular financial period, and there was nothing in the other articles to alter the natural meaning of the language of article 94. Then, was this view inconsistent with anything in the authorities? In *Staples v. Eastman Photographic Materials Company* the holders of preference shares were to be entitled to their preference dividend "out of the net profits of each year." There was nothing of that kind here, and in his Lordship's opinion there was nothing to prevent the preference shareholders in this case from resorting to the profits of subsequent years to make up a past deficiency of dividend. There must be a declaration accordingly.

(Times.)

## Law Reports.

### ***Bankruptcies and Insolvencies.***

#### CHANCERY DIVISION.

May 25.

(Before BUCKLEY, J.)

#### **Ponsford, Baker & Co. v. Union of London and Smiths Bank, Llm.**

*Bankruptcy—Protected Transaction—Securities held by Bank for Advance—Act of Bankruptcy—Handing over Securities—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49.*

This was a motion on behalf of Messrs. Ponsford, Baker & Co. and Mr. H. L. S. Richardson, the Official Assignee of the Stock Exchange, who were the plaintiffs in the action, for an order that on payment into Court of a sum sufficient to cover the amount owing to the bank by Messrs. Ponsford, Baker & Co. the bank might be ordered to deliver up certain stocks, shares, and securities held by them.

Mr. Buckmaster, K.C., and Mr. Felix Cassel, for the plaintiffs, said that on April 26 1906 the bank held certain of the securities as security for a loan by the bank to the plaintiff firm of £10,500, and held other securities for safe custody. On April 27 1906 the firm were declared defaulters on the Stock Exchange, and thereupon it became the duty of the plaintiff Richardson, as Official Assignee of the Stock Exchange, to collect the assets of the firm. There was a balance due to the bank on the security, and there was a balance due by the bank on current account. The bank was asked to hand over the securities and transfer the latter balance on being paid what remained due on the securities, but refused to do so, on the ground that, as the Official Assignee was assignee of all the property of the firm, an act of bankruptcy had been probably committed within three months, of which the bank had notice, and that under the circumstances, and having regard to section 49 of the Bankruptcy Act, 1883, the bank could not safely hand over the property until the three months had expired without bankruptcy proceedings being commenced against the firm. It need not now be discussed whether there had been an act of bankruptcy, but, assuming there had been, the bank could not refuse to hand over the property on being paid what was owing to them. It was contended by the bank that if bankruptcy proceedings were commenced there would be relation back to the date of the act of bankruptcy, so as to defeat interim dealings by a person having notice of that act, and that such a person would not be protected by section 49. But the rule as to interim dealings with notice not being protected could not be of universal application, otherwise a sheriff who had seized a debtor's goods in execution could not safely either receive money to pay out the execution or hand over to the debtor the

balance of the proceeds of sale of the goods. Even the debtor's bankers, if they had notice of the execution, could not safely honour the debtor's cheque for the money to pay out the execution. That would be an absurd and inconvenient result. But, apart from principle, the point was covered by authority, as Mr. Justice Wright, in *In re Lawford and Lawrence* (1902, 2 K.B. 445), had held that a pledgee of chattels who, with notice of an act of bankruptcy, handed back the chattels on being paid off, was not liable to the trustee in the pledgor's subsequent bankruptcy, because he was bound by his contract to deliver up the chattels on being tendered the amount due to him at the date for redemption.

Mr. R. J. Parker, for the bank, said that the bank only wished to be protected from liability in the event of the subsequent bankruptcy of the firm. Section 49 only appeared to protect a dealing between the act of bankruptcy and the petition, when the dealing was with a person who had no notice of the act of bankruptcy. The section was really a limitation of the old law affecting intermediate dealings with the debtor's property. The question was stated by Mr. Justice Wright in the case cited to be one of great doubt and difficulty.

#### JUDGMENT.

Mr. Justice Buckley said the decision in *In re Lawford and Lawrence* was directly in point, and he should follow it even if he held a different opinion, which was not the case. There must be an order that, on payment to the bank of the amount due on the security, after giving credit for the amount due on the current account to the firm, the bank should deliver up the securities claimed. The motion would be treated as the trial of the action, and the bank must pay the costs.

(22 *Times Law Reports*, 581.)

#### KING'S BENCH DIVISION.

May 15.

(Before KENNEDY and A. T. LAWRENCE, JJ.)

#### **Pearson v. Wilcock.**

*Bankruptcy—Administration Order—Total Debts not exceeding £50—County Court—Subsequent Creditors—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 122, subsec. 5.*

This was the plaintiff's appeal from the judgment of the Judge of the Bradford County Court, and raised the question of the rights of subsequent creditors against a debtor as to whom an administration order under section 122 of the Bankruptcy Act, 1883, had been previously obtained, the total debts in respect of which it was made being under £50.

The plaintiff, in June 1905, obtained judgment against the defendant in the Bradford County Court for £5 1s. 1d. for groceries supplied, which judgment was made payable in instalments of 5s. a month. The second instalment

remaining unpaid, execution was issued, but the bailiff did not actually go into possession. Application was made by the defendant to stay execution, upon the ground that he had three years previously obtained an administration order under section 122 of the Bankruptcy Act, 1883. This fact had never been communicated and was unknown to the plaintiff. The administration order provided for the payment of 5s. in the pound on the debts, to be paid at the rate of 4s. a month, the debts amounting to £35. The County Court Judge granted the application, and held that the plaintiff must prove for his debt under the administration order. He based his judgment on his construction of section 122 (5) of the Bankruptcy Act, 1883, which enacts:—"When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a County Court, except with the leave of that County Court, and on such terms as that Court may impose. . . ."

Mr. Compston, on behalf of the plaintiff, contended that the plaintiff could not be deprived of his right to levy execution unless the Bankruptcy Act, 1883, or section 153 of the County Courts Act, 1888, had that effect. With regard to the latter Act, he submitted that the existence of the administration order was not "sufficient cause" within the meaning of section 153, which must be *ejusdem generis* with sickness—*Attenborough v. Henschel* (1895, 1 Q.B. 833). Sub-section 5 of section 122 of the Bankruptcy Act, 1883, only applied to creditors who were such at the time when the order was made, as appeared from rules 3 and 7 of the Bankruptcy (Administration Order) Rules, 1902, which could only refer to such creditors. Sub-section 12 of section 122 did not provide an exclusive remedy for subsequent creditors, but an alternative one, if the debtor had no property to seize or the remedy by commitment was not available. It might be contended that because under the Bankruptcy (Administration Order) Rules, 1902, rule 15 (3), "Where the debtor subsequent to the date of the order has obtained credit to the extent of £2 or upwards without informing the creditor that he has an administration order," the administration might be set aside, it must be implied that a subsequent creditor was bound by the order, as the rule contemplated proceedings being taken by him to set it aside, which he would not desire to do if it did not affect him. But the right to issue execution should not be taken away on a mere inference. By order 25, rule 42, of the County Court Rules, 1903, in the case of a judgment debtor no order of commitment was to be made where an administration order under section 122 had been made and the debt incurred before the order; but debts incurred after the order were not dealt with. He submitted that the County Court Judge was wrong.

#### JUDGMENT.

Mr. Justice Kennedy, in giving judgment, said that in his

opinion the County Court Judge was right. It had been thought by the Legislature that poor men should have, in substance, the powers and benefits of the Bankruptcy Acts, and that there should be a method of clearing themselves from debts whose total was under £50 in amount, and of starting afresh. As he understood the legislation, this object was to be attained by enacting that the debtor should give up all his property, and that the Judge should have power to order payment of his debts out of future earnings. That was carried out by the provisions of section 122 of the Bankruptcy Act, 1883. They were concerned at present with sub-section 5 of that section. [His Lordship read it.] He thought that that sub-section in the first instance was for the protection of existing creditors, and for this very cogent reason, that if subsequent creditors were at liberty, on obtaining judgment against debtors who had obtained an administration order, to issue execution against their goods, it would be quite impossible for them to pay their debts unless there were some restraining power in the Court. But the exercise of this power was in the discretion of the Court, which in some cases might authorise an execution or order a commitment. The Court might find that the debtor had other means, in which case the section provided that it might give leave to the creditor to exercise his remedy; but it was for the creditor to satisfy the Court that he ought to be allowed to proceed. It seemed to him, if one looked at section 122, that this was in the mind of the Legislature, for sub-section 12, which enabled subsequent creditors on application to the Registrar to be scheduled with the other creditors, had provided an utterly unnecessary procedure if they could come to the Court and get an order to issue execution or of commitment as a matter of right. He could not see anything in order 25, rule 42, which conflicted with this view; and he could not see the use of order 15 (3) of the Bankruptcy (Administration Order) Rules, 1902, if the creditor had the ordinary remedies. He thought the County Court Judge was right, and that the appeal must be dismissed.

Mr. Justice A. T. Lawrence said that he was of the same opinion. He agreed with Mr. Compston that the right of execution could only be taken away by express provision, but he thought this was to be found in section 122, sub-section 5, of the Bankruptcy Act, 1883. He had listened with all the attention he could give to the very ingenious argument, which in his opinion failed. Sub-section 5 applied to every creditor, whether such at the time of the order or subsequently to it. If every creditor were to levy execution, the administration order would come to an untimely end. It was intended to enable the debtor to go on earning money, and to protect him from the creditors, and in an indirect way to protect him against himself, for the knowledge of the existence of the order ought to induce tradesmen to refuse to give him credit. The Judge ought

to see whether the debtor had acted in such a way as to entitle him to protection, and to allow the administration order to be carried out; it was a matter for his discretion. The subsequent creditor, under sub-section 12 of section 122, could get his debt scheduled. True, it was not a very advantageous remedy, but it was the best he could get.

The appeal was accordingly dismissed.

(22 *Times Law Reports*, 562.)

## Partnerships.

### KING'S BENCH DIVISION.

May 24.

(Before RIDLEY and DARLING, JJ.)

**Sturgeon Brothers v. Salmon.**

*Partnership—Dissolution—Partnership at Will—Assignment by Partner of his Share—Partnership Act, 1890 (53 & 54 Vict. c. 39), secs. 26, 32, 46.*

This was the defendant's appeal from the judgment of the County Court Judge, and raised the question whether the defendant was liable, as a partner, for work done by the plaintiffs.

The partnership agreement was entered into in May 1899, the partners being Mr. Oliver, Mr. Shillito, Mr. Smith, and the defendant, the latter, however, taking no active part in the business. It was a partnership at will, clause 1 of the agreement providing, "The parties hereto shall be and continue partners in the business of brick and tile making so long as they shall mutually agree." By clause 6, "In the event of any partner . . . desiring to retire, he shall give one calendar month's notice, to allow his shares to be purchased by the remaining partners," &c. In October 1901 Oliver retired. On November 25 1901 the defendant sold his share to Shillito, not having offered it to the remaining partner, Smith, in breach of clause 6 (*supra*). No express notice of intention to retire was given to Smith, but the County Court Judge found that Smith, when he subsequently heard of the assignment by the defendant of his share to Shillito, disapproved of it, and, inferentially, that he in fact knew of the assignment at some subsequent time. The work in respect of which the plaintiffs claimed was done between November 1902 and March 1903. The plaintiffs admitted that they did not know when they did such work that the defendant had anything to do with the partnership and had not given him credit. In March 1904 Shillito became bankrupt, and in October 1905 this action was brought. The County Court Judge held that the defendant had not retired from the partnership in the manner prescribed by the provisions of clause 6, that it was still subsisting when the work claimed for was done, and gave judgment for the plaintiffs.

Mr. Wild, for the defendant, admitted that the defendant ought to have offered his shares to both parties,

but submitted that the breach of clause 6 was merely a matter for the parties themselves, and had nothing to do with outside parties. The other side would contend that mere assignment of shares does not constitute a dissolution and would rely on section 26, sub-section 1, of the Partnership Act, 1890 (53 and 54 Vict., c. 39), which enacts, "Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners." No express notice was given here, but Smith in fact knew of the transfer, and he contended that the sale of the share and the consequent determination of any right to share in the profits, plus the knowledge of Smith, constituted a valid retirement.

Mr. Justice Darling: When do you say the retirement became effective; on the transfer, or when Smith got to know of it?

Mr. Wild said that if driven to it he was prepared to contend that the transfer alone constituted retirement. The essence of partnership was profit sharing, and partnership was a branch of the law of agency. When, in fact, the agency ceased, the partnership ceased, apart from any question of "holding out," which was not suggested here. That was certainly the law prior to the Partnership Act, 1890, and it was submitted that nothing in that Act altered the law. He also maintained that on the findings of the County Court Judge notice, in fact, had been given. No formal notice was necessary, as the partnership agreement was not a deed.

Mr. Justice Ridley: We only wish to hear you, Mr. Henlé, on the point whether the assignment by itself acted as a dissolution of this partnership at will.

Mr. Henlé, for the plaintiffs, said that it was settled by authority that under an agreement containing a clause even stronger than clause 6 the assignment did not *ipso facto* dissolve the partnership, but only gave the other partners the option to dissolve.

(The following cases and authorities were referred to during the course of argument:—*Carter v. Whalley* (1 B. and Ad. 11), *Heath v. Sansom* (4 B. and Ad. 172), *Cox v. Hickman* (8 H.L.C. 268, at p. 312), *Campbell v. Campbell* (6 Reports, 137), "Lindley on Partnership," 5th ed., pp. 583, 584; 7th ed., pp. 620, 621.)

### JUDGMENT.

Mr. Justice Ridley, in giving judgment, said: I think we must support the finding of the County Court Judge. It may, no doubt, be thought a hardship that, having parted with his share to another partner, he should be held liable in this action. We must not regard that, but decide the matter as a question of law. Was he liable notwithstanding the assignment? For the purpose of considering that it must be remembered that there were four partners, a Mr.

Oliver, Mr. Shillito, Mr. Smith, and the defendant. Mr. Oliver went out, and in 1901 the defendant sold his share to Mr. Shillito, and no notice was given to Mr. Smith at the time. Clause 6 provides [his Lordship read it]. In the present instance the requirements of that clause were not fulfilled. Mr. Wild endeavours to maintain that notice was given to Mr. Smith. I think not. It was his duty to give notice of his intention to assign. He did not do so, and it seems to us that because at some following period, indeed years after, it came to the knowledge of Mr. Smith, that therefore he had the knowledge which clause 6 says he shall have. It seems to me he should have had it at the time of the intended assignment in order that he might govern his own actions. The first point seems to me to fail. Mr. Wild says that he has the right to contend that the parties did follow the provisions of the agreement, because although at the time Mr. Smith had no notice, still he did subsequently have knowledge, and therefore he (Mr. Wild) was entitled to say that the defendant acted in accordance with the agreement. I do not think he can maintain that as a matter of fact. When you have an agreement of this kind you must follow the terms. The other point requires more attention, although I think he cannot maintain his proposition. He says that in a partnership at will an assignment by one partner to another works a dissolution. For this proposition he quotes "Lindley on Partnership" and *Heath v. Sansom*. I think it doubtful if that case would have application where there are three partners. In *Heath v. Sansom* there were only two partners, and it was not a case of mere assignment; in accordance with an agreement entered into between the partners, everything was done by the referee, except that he failed to declare that the partnership had determined. I do not think that case is an authority for the proposition that in a partnership at will the assignment by one partner to another works a dissolution. I will not read the judgments again. Lord Lindley's book has also been quoted as an authority for the proposition. I do not think he does so lay it down. In the 1888 (5th) edition he does state it generally, and in the 1905 (7th) he gives it with some modification. He does not put it down as an absolute rule, and says there is little authority for it in this country. It seems to me the case of *Campbell v. Campbell* is important. That case shows that where an agreement contains a clause to the effect that if one partner assigns his share the partnership should stand dissolved, such an assignment would not work an immediate dissolution, but give the right to the other partners to dissolve. Clause 6 in this case is not so strong. In the other clause it was

positively provided that the partnership should "stand dissolved." Section 46 of the Partnership Act, 1890, has been referred to, which provides that the rules of equity and common law should be applicable except where inconsistent with the express provisions of the Act; but section 32 and the following sections of the Act give the modes in which a partnership can be dissolved, and it would be inconsistent with these sections to say that a mere assignment would operate as a dissolution. That was the opinion of the learned editors of "Lindley on Partnership," but it is not necessary for me to determine the question, because according to this agreement there was no such assignment as would constitute a dissolution of the partnership.

Mr. Justice Darling said: I am of the same opinion. I think there is a great deal to be said for Mr. Wild's contention that prior to the Partnership Act an assignment, in the case of a partnership at will, would have operated as a dissolution, and there is distinct authority for that proposition in the 5th edition of "Lindley on Partnership." He gives as an authority the case of *Heath v. Sansom*, and I am not sure that I agree with my brother Ridley as to the effect of *Heath v. Sansom*. The passage from Lord Lindley's book is very distinct. If the matter had remained there I am not so sure that we could have upheld the County Court Judge's decision. Since the 5th edition of the Partnership Act, 1890, has been passed, containing several provisions—section 32 *et seq.*—which have led the learned editors of Lord Lindley's book to qualify the opinion previously expressed, and they use words to this effect [his Lordship read the passage at page 621 of the 7th edition]. They maintain the former opinion, but consider the Act may have altered the law. I do not think they took notice of section 46. Speaking for myself, I should have thought it doubtful, if it were correct to say that in a partnership at will an assignment by one of the partners would work a dissolution, that this would be inconsistent with the provisions of sections 32 and 33 within the meaning of section 46. My judgment in this case will go upon the particular ground that clause 6 in this particular agreement prevents the application of this doctrine. I will not state my reasons for that, as my brother Ridley has fully gone into the question. To my mind clause 6 renders the decision of *Campbell v. Campbell* applicable to this case; and because that is so, a mere assignment would not in this case have the operation for which Mr. Wild contends. But if it were not for clause 6 I should have had no difficulty in acceding to his contention.

(22 *Times Law Reports*, 584.)

## Law Reports.

### Bankruptcies and Insolvencies.

#### DIVISIONAL COURT IN BANKRUPTCY.

May 21.

(Before BIGHAM and JELF, JJ.)

**Re A Debtor No. 1 of 1906; ex parte The Petitioning Creditor.**

#### *Reduction of Petitioner's Debt—Acceptance.*

An appeal against the dismissal of a petition. The judgment debt was for £91 7s. 3d., and a petition was filed on the 24th February 1906. On the 8th of March £20 was paid off the debt. The petition was adjourned to the 28th March, and on the 24th of that month a further £20 was paid, bringing the debt down to something over £50. The debtor then tendered a Bank of England note for £10, so as to reduce the debt below £50, the minimum sum necessary to found a bankruptcy petition. Counsel said that the creditor declined to accept it, as there being an act of bankruptcy in existence he might be called upon to refund it. He decided, therefore, to preserve his position.

#### JUDGMENT.

The Court held that there had been acceptance of the note, it transpiring that the money had been retained and was still in the hands of the creditors or their solicitors, and dismissed the appeal, with costs.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

#### DIVISIONAL COURT IN BANKRUPTCY.

May 21.

(Before BIGHAM and JELF, JJ.)

**Re Hayward & Sons; ex parte The Bankrupts v. The Official Receiver.**

#### *Refusal of Discharge Varied — No Misconduct or Fraud Alleged.*

This was an appeal from the County Court of Poole by the bankrupts against an absolute refusal of their discharge. It appeared that the bankrupts, who failed in 1895, had been speculative builders, and the Official Receiver in his report had alleged a number of statutory offences, but nothing, counsel suggested, sufficiently serious to involve a refusal of discharge.

#### JUDGMENT.

The Court having regard to the date of the failure varied the order, and suspended the application for two years from the 19th March 1906, the date of the application, to the Court below, on the understanding that the

bankrupts consented to judgment being entered against them for £65.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

#### DIVISIONAL COURT IN BANKRUPTCY.

May 21.

(Before BIGHAM and JELF, JJ.)

**Re Slater Bros.; ex parte Warrington Slater v. The Official Receiver.**

#### *Insufficient Disclosure of Estate — Public Examination Adjourned "sine die"—Discharge of Bankrupt.*

This was a renewed application for directions to issue to the Registrar at Sheffield to reopen the public examination of the debtor, which had been adjourned *sine die*, on the ground that there had been insufficient disclosure of the estate and non-discovery of certain documents and books. On a previous application with a similar object the matter had been referred back to the County Court to give the debtor an opportunity to satisfy the Registrar, but the bankrupt had been unable to get the order varied. It was explained that the bankrupt wanted to apply for his discharge, but was prevented from doing so until the public examination was concluded.

#### JUDGMENT.

The Court held that there had been insufficient discovery, and dismissed the appeal, with costs. The Board of Trade opposed the appeal.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

#### KING'S BENCH DIVISION.

May 28.

(Before BIGHAM, J.)

**In re Garner; ex parte Pedley.**

#### *Bankruptcy—Sale by Trustee of Mortgaged Property—Proceeds of Sale—Costs—Part VII., Rule 2, of Appendix to Bankruptcy Rules, 1886.*

Application to review the Taxing Officer's decision.

John Garner was at the time of his bankruptcy the owner of a number of properties in Crewe. These properties were severally subject to first mortgages, and they were also subject to a second mortgage on the whole of them. The properties were estimated to be worth about £14,000, and there was, according to the debtor's statement of affairs, a surplus of about £3,000 over and above all the mortgages.

The trustee in bankruptcy sold three of the properties, and the proceeds of sale were employed in paying off the



first mortgages and also in discharging a considerable part of the second mortgage. Only a small sum of £1 gs. 11d. was paid to the trustee.

Mr. Pedley was the solicitor employed by the trustee to carry out the sale, and his bill of costs in respect of them was taxed by the Registrar of the County Court under the Solicitors' Remuneration Act, 1881, at a sum of £16 10s. At the request of the Board of Trade the bankruptcy Taxing Master reviewed the taxation, and under rule 2 of Part VII. of the scale of solicitors' costs in the appendix to the Bankruptcy Rules, 1886, he taxed off a sum of £15 os. 1d., reducing the bill to £1 gs. 11d., on the ground that the solicitor was only payable out of the proceeds of sale, which in this case amounted only to £1 gs. 11d.

Mr. Pedley appealed against this decision.

The above-mentioned rule provides that in respect of business connected with sales, purchases, loans, mortgages, and other matters of conveyancing the solicitor's remuneration is to be regulated by the General Order under the Solicitors' Remuneration Act, 1881, for the time being in force, "provided that in cases of sales of mortgaged properties the trustee's solicitor, if his remuneration shall be under Schedule 1 of the existing order, shall only be entitled to percentage upon so much of the proceeds of sale as shall not be chargeable by the mortgagees' solicitor with the percentage, and such percentage shall be payable only out of the proceeds of sale."

#### JUDGMENT.

Bigham, J., said that it was not the duty of the Taxing Master in bankruptcy, when taxing a solicitor's bill of costs under this rule, to decide out of what fund the bill as taxed and allowed ought to be paid. His duty was to tax the bill in accordance with the General Order under the Solicitors' Remuneration Act, 1881. In giving his allocation he should state that the amount of the bill as taxed was to be paid in accordance with rule 2 of Part VII. in the appendix to the Bankruptcy Rules, 1886, and it would then rest with the parties to ascertain the fund out of which the bill was payable. Under these circumstances it was not necessary for him to decide the meaning of the words "proceeds of sale" in the rule.

(L.J. 372.)

#### KING'S BENCH DIVISION.

May 29.

(Before BIGHAM, J.)

**Re Briggs & Co. ; ex parte The Trustee.**

*Bankruptcy—Partnership—Assignment of Book Debts of the Partnership—Signature of One Partner Forged—Validity of Assignment—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 6.*

Motion by the trustee in bankruptcy to set aside an assignment of book debts of the bankrupt firm of Briggs &

Co. The firm had consisted of father and son, the father generally was travelling, the son remained at the office and had charge of the financial part of the business. By the partnership deed the son had power to sign on behalf of the firm, but he had no authority to sign cheques on the firm's banking account, which were always signed by the father. In August 1905, in the absence of the father, the son was pressed by the respondents to the present motion, who were large creditors of the firm, and he agreed, without informing his father, to give them an assignment of book debts due to the firm. The assignment was drafted by the respondent's solicitor and was headed: "An indenture made between R. B. Briggs and H. R. Briggs, trading as 'cork retailers, under the style or firm of Briggs & Co.'" It purported to be signed by R. B. Briggs and H. R. Briggs separately, but it was admitted that the signature of R. B. Briggs, the father, was a forgery. The son never told his father of the assignment and absconded soon after executing it. The firm became bankrupt, and a trustee was appointed who now sought to set aside this assignment as not having been duly executed.

#### JUDGMENT.

Bigham, J., held that the assignment was duly executed. It had been executed for the purposes of the partnership business by the son, a partner having authority to deal with the book debts for the purposes of the partnership business. He had authority to execute it so as to bind the firm. The assignment was binding on the firm by virtue of section 6 of the Partnership Act, 1890, having been executed in a manner showing an intention to bind the firm by a person thereto authorised—viz., a partner.

Application dismissed.

(50 S.J. 514.)

### Company Law.

#### CHANCERY DIVISION.

May 30.

(Before BUCKLEY, J.)

**Re Cowbrough & Co. (Limited and Reduced).**

*Reduction of Capital—Surrender by Vendor of Ordinary Shares.*

Petition for reduction of capital. The company was formed in 1896 with a capital of 13,000 shares of £5 each, divided into 7,000 preference and 6,000 ordinary shares. The shareholders had passed a special resolution for the surrender of 1,393 ordinary shares originally allotted to the vendor on the formation of the company, which had turned

out to be of less value than anticipated. Counsel explained that the reduction would not involve any diminution of liability to, nor payment to, creditors.

## JUDGMENT.

The order was granted subject to the words "and reduced" being used as part of the title for three months.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## CHANCERY DIVISION.

May 30.

(Before BUCKLEY, J.)

***Re Calgary and Edmonton Land Company  
(Limited and Reduced).***

*Reduction of Capital—Return of Excess Capital.*

This was an application for a further reduction by a repayment of capital in excess of the company's wants. The capital was originally 241,510 shares of £1 each, out of which 2s. 6d. in the £ had subsequently been repaid. The present application was for an order that a further 7s. 6d. might be returned to shareholders, leaving the capital at half the original sum. It appeared that the company had large tracts of land in North-West Canada at one time, which had been to a certain extent realised, leaving large funds in hand, there being no intention to embark in any new undertakings.

## JUDGMENT.

After proof had been furnished that the necessary special resolution had been duly passed and the Registrar's certificate of "no debts" had been put in, the order was granted, subject to the words "and reduced" being used for one month.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

## CHANCERY DIVISION.

May 26 and June 1.

(Before SWINFEN-EADY, J.)

***In re The Lees Brook Spinning Company.***

*Company—Capital in Excess of Wants of Company—Reduction by Return of Capital—Procedure—Form of Minute—Companies Act, 1867 (30 & 31 Vict. c. 131), secs. 9, 15—Companies Act, 1877 (40 & 41 Vict. c. 26), secs. 3, 4.*

On a petition by this company for sanction of a reduction of the capital from £80,000 in 16,000 shares of £5 each (£2 10s. paid) to £32,000 in 16,000 shares of £2 each, on which it was proposed that £1 per share should be deemed to be paid up, involving a return of £1 10s. per share to the

shareholders, a question arose as to the form of the order and minute, in view of the decision in *In re Calgary and Edmonton Land Company* (75 L.J. Rep. Ch. 138; L.R. (1906) 1 Ch. 141), that an order approving a minute which stated the reduced capital could not be made till the capital had actually been repaid.

## JUDGMENT.

Swinfen-Eady, J., in a considered judgment, said the Acts clearly contemplated that the order of the Court and the registration of the minute should precede any repayment of capital, for the resolution for reduction did not come into operation till those formalities had been gone through, and until there was an effective resolution the company was not entitled to repay capital. To make two orders—one sanctioning the reduction and the other approving the minute after the reduction had been carried out—was not, he said, a procedure contemplated by the Companies Acts, while to make one order and post-date it after carrying the reduction into effect would be attended with difficulty in cases where the shareholders were not all at hand to receive their money. Moreover, the company would be repaying capital on a reduction the approval of which might be reversed on appeal. He preferred to adhere to the practice which prevailed before the decision in *In re Calgary and Edmonton Land Company*, and which was fully stated in "Palmer's Company Precedents," 9th edition, Part I., pp. 1,144, 1,145.

(L.J. 388.)

## Miscellaneous.

## KING'S BENCH DIVISION.

May 28.

(Before BUCKNILL, J.)

***J. L. Harris v. C. E. Gillham and E. Berger.***

*Director as Money-Lender.*

A point under the Moneylenders Act of 1900 was raised in an action brought by Bertram J. Linton Harris, who has offices in Lombard Street, against Joseph C. E. Gillham, F.C.A., and Emil Berger, both having offices in Winchester Street. The claim was against Gillham as drawer and against Berger as acceptor of two bills of exchange, dated December 20 1905, payable two months after date.

Mr. Douglas Hogg explained, on behalf of plaintiff, that this was a claim for the sum of £420 8s. 8d.—£20 agreed amount for extending the time for the presentation of two bills and £400 balance due on those bills. Judgment had been signed against Berger as acceptor in default of payment.

Mr. Alfred Ward, who described himself as a "chartered secretary of public companies," was called to prove the signatures and the giving to Mr. Gillham of notice of dishonour.

Cross-examined by Mr. Low, K.C., who appeared for defendant Gillham, witness asserted that he was not in the employment of Mr. Harris. He, however, had rooms at the same address in Lombard Street, and during his absence attended to his affairs for him, but without remuneration. He had been associated with Mr. Harris since September 1904. He had known him to lend money.

Mr. Low submitted that on the evidence it was perfectly clear that plaintiff was a moneylender. The Money-lenders Act of 1900 provided, among other things, that a moneylender should be registered, and he was prepared to prove that in this case plaintiff was not registered. The consequence was that he could not recover this amount.

Plaintiff, Mr. Harris, said he was a "director of companies, and also a chartered secretary." He was not a moneylender. With regard to these two bills, the transaction came about in this way. Mr. Berger said that Mr. Gillham and himself were in difficulties, as they had certain calls and moneys to pay to a syndicate in which they were interested, and for that purpose he required £300. Witness told Berger that he would arrange an advance of £250 if Gillham himself would draw the bill covering the whole of the indebtedness. Berger said he would try to get this done, and offered him a bonus and some shares in the syndicate as a security. He had discounted bills before, but only for business acquaintances.

Cross-examined by Mr. Low, witness said he was a member of the Institute of Chartered Secretaries, but was not secretary of any particular company. He arranged mortgages, obtained capital for companies, and did a general city finance business. He did not deny that he had lent money, but he did deny that he carried on the business of lending money. He did not do the business of an advertising money-lender.

I am not talking of advertising. Is it your business to finance people?—Yes, in the course of my business.

What to your mind constitutes the difference between the business of financing people and the business of lending money?—I call it lending money when you have absolutely no security of any kind.

Then your reason for saying that you are not a money-lender is that you take security?—And for specific transactions, and not for accommodation.

#### JUDGMENT.

His Lordship considered that Mr. Harris was a money-lender within the meaning of the Act. As he was not registered he could not sue, and there would therefore be judgment for defendant Gillham, with costs.

(Daily Telegraph.)

## Partnerships.

### KING'S BENCH DIVISION.

May 24.

(Before RIDLEY and DARLING, JJ.)

### Wheatley v. Smithers and Another.

*Partnership—Bill of Exchange—Auctioneer—Trading Firm.*

This was an appeal from the City of London County Court. The action was upon a bill of exchange for £50 accepted by one Alcock in the name of the firm (Smithers & Alcock) of which he was a partner. The County Court Judge found (1) that the partnership, for the purpose of carrying on the business of auctioneers, was not a trading one; (2) that the matter for which the bill was accepted was outside the partnership business; (3) that Alcock had no express authority from Smithers to accept the bill; (4) that Alcock purposely concealed such acceptance from Smithers. In accordance with these findings the Judge entered judgment for the defendant, Smithers, with costs. Counsel for the appellant said that it would not be disputed that the firm would be liable on the bill under the circumstances if the firm had been a trading firm, and he submitted it was a trading firm. There was no direct authority on it, but for the purposes of the Bankruptcy Act, 1869, auctioneers were included amongst the class of trade. The first schedule of that Act provides: "Alum makers, apothecaries, "auctioneers, . . . persons using the trade of merchandise by way of commission, . . . persons who, "either for themselves or as agents for others, seek their "living by buying or selling . . ." shall come within the description of traders. Under the Companies Acts only trading firms can borrow without express authority being given by the memorandum of association or articles of association. It has been held in *General Auction Estates Co. v. Smith* (1891, 3 Ch. 432) that that company, which carried on the business of engineers, was a trading company. Counsel for the respondent was not called upon to argue.

#### JUDGMENT.

The Court dismissed the appeal.

Ridley, J., in giving judgment, said he was not prepared to differ from the finding of the County Court Judge. Auctioneers carried on a business, but the term business was wider than the term trade, as clearly stated by Willes, J., in *Harris v. Amery* (L.R. 1 C.P. 154). Because auctioneers had been called traders for a special purpose by the Bankruptcy Act, 1869, that was no reason why they be so called for all purposes.

Darling, J., concurred.

(50 S.J. 513.)

**Law Reports.****Bankruptcies and Insolvencies.****DIVISIONAL COURT IN BANKRUPTCY.**

April 4.

(Before BIGHAM and WALTON, JJ.)

**Re G. A. Lodge.***Promissory Notes—Interest Appropriations—Failure of Borrower.*

An appeal by the Official Receiver as trustee from the decision of the County Court Judge at Barnsley. The facts were that the bankrupt had borrowed £50, for which he had given a promissory note for £70, the amount to be repayable by seven equal monthly instalments of £10 each. Prior to the bankruptcy the sum of £20 had been repaid, which the creditor had appropriated to interest, and sought to prove against the estate for £50. The trustee had admitted the claim at £36 3s. 2d., being five-sevenths of £50, with interest at 5 per cent., the statutory rate allowed under section 23. The County Court Judge had held that the creditor was entitled to appropriate the payments made wholly to interest, hence the appeal.

**JUDGMENT.**

The Court allowed the appeal, holding that the case came within the principles laid down in *Holland; ex parte Parker*, and that repayments were intended to represent both principal and interest, and that the creditor could not go behind the promissory note and appropriate wholly to interest. Leave for further appeal was given.

In *Holland's* case a moneylender discounted two promissory notes of a borrower for £400 and £600 respectively, at an agreed discount of £400, or, in other words, for £600 in cash. The £400 note was paid at maturity, but before the other note matured the borrower became bankrupt and the money-lender claimed to prove for £600. The trustee in the bankruptcy had admitted the proof for £200 only—i.e., £600, less £400 already paid, with interest at 5 per cent.

It was held that the £1,000 must be treated as a lumped sum of principal and interest, and the creditor's proof admitted at six-tenths of £600—i.e., £360, with interest at 5 per cent. from maturity to date of receiving order.

**COURT OF APPEAL.**

May 18.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

Shearman, K.C., in support argued that on the non-payment of the third instalment the whole amount

became due, and the creditor was justified in appropriating payments received to interest and proving for £50.

**JUDGMENT.**

The Master of the Rolls, without calling upon counsel for the Board of Trade, who opposed the appeal, said that he agreed absolutely with the judgment given in the Court below. There could be no *ex post facto* appropriation, seeing that by the terms of the promissory note the instalments which had been paid clearly represented both principal and interest, and the appeal must therefore be dismissed.

Lords Justices Romer and Cozens-Hardy concurred, the former remarking that he wished that all cases were as easy to decide.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

**DIVISIONAL COURT IN BANKRUPTCY.**

May 21.

(Before BIGHAM and JELF, JJ.)

**Re F. Waterman; ex parte The Trustee v. John Cran & Co.***Bankruptcy of Contractor—Position of Sub-contractor—Admiralty Contracts.*

This was an appeal from the judgment of the County Court Judge at Stonehouse. The case was reported at length in *The Accountant* of the 31st March last.

**JUDGMENT.**

Mr. Justice Bigham, in setting aside the judgment of the Court below, said the facts were simple. Waterman, the bankrupt, was a builder of hulls, but did not construct machinery. The Admiralty were anxious to get some steam launches, and Waterman was invited to tender. The Admiralty knew that he did not make machinery. They pointed out that they preferred the machinery of certain firms whose names were given in a list issued by them, which Waterman was at liberty to use, Cran's name being included in the list. The Admiralty, moreover, supplied the forms on which the tender was to be made. There were therefore two contracts—one between the Admiralty and Waterman and the other between Waterman and Cran for the machinery. The payments were in respect of the whole, which sums Waterman was to receive. No doubt Cran expected, and I have no doubt Waterman intended, that on the receipt of money an equivalent proportion should go to Cran for his share of the work, but an instalment having fallen due directly after the failure of Waterman, it is contended, because the payment was made on the machinery having reached a certain stage of

completion, that the money should go to Cran & Co., it being also contended that the trustee in bankruptcy is really a trustee for Cran. This is not so. The money had been received from a third party in discharge of contractual obligations to the debtor, and Cran's remedy is merely one against the insolvent estate by proof of debt. There was a contract and a sub-contract, and there was no privity between the Admiralty and Cran & Co., and the latter firm had no equitable right to the money in the hands of the trustee.

Mr. Justice Jelf agreed.

Leave for further appeal given.

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

### DIVISIONAL COURT IN BANKRUPTCY.

May 21.

(Before BIGHAM and JELF, JJ.)

#### *Re A Debtor* (No. 6 of 1906); *ex parte* **The Petitioning Creditors v. The Debtor.**

##### *Deeds of Composition and Assignment—What is Acquiescence?*

An appeal from the refusal of the Registrar at Chelmsford to make a receiving order. In opening the case counsel said that no reason had been given for dismissing the petition, but probably the grounds which had induced the Registrar to refuse the order were that he considered that the creditor delayed taking steps in bankruptcy and had estopped himself by acceptance. The act of bankruptcy was a circular letter giving notice of a meeting of creditors. The petitioning creditor neither attended nor was represented at the meeting, nor was there any evidence of his assent or acquiescence to the deed which was subsequently executed on the 18th January. The creditor, it appeared, did not get the first circular, and it was not until the 26th January, when he received a second circular, that he became aware of the meeting. The petition was presented on the 8th February. The creditors had accepted a composition of 10s. in the £, payable by four instalments, the debtor undertaking to find a guarantor for the payment of the last two instalments. The petitioner was willing to accede to this arrangement, and he waited to see whether it would be carried out. Eventually the offer of composition was withdrawn, and a mere assignment of the estate executed in favour of a trustee. The creditor thereupon presented a petition. The debtor claimed that there had been delay in presenting the petition, which he endeavoured to interpret into acquiescence, and counsel on his behalf quoted the cases of *Ex parte Stray* (2 Ch. App.), where the Court construed acquiescence from presence and conduct at the meeting of creditors; and *Re Brindley*, a

recent case decided in the Court of Appeal, where the creditor was restrained from upsetting the deed by previous negotiations with the trustee for preferential treatment.

##### JUDGMENT.

Mr. Justice Bigham said he certainly thought the appeal should be allowed. He could not understand why the creditor should be deprived of the benefit of the three months which the Act gave him. He could understand the decisions in the cases quoted, but they were far from being analogous to the present one. It was clear that where a creditor had shown his hand in an unmistakable way the Court would possibly regard the application differently, but here there had been neither acquiescence nor unreasonable delay in presenting a petition. The creditor had simply done nothing, and he could not follow the argument that he had therefore done something.

Mr. Justice Jelf entirely agreed.

Leave to appeal given.

(The cases quoted above show that it is not absolutely necessary for creditors to sign the form of assent to make them bound by the deed, as many trustees think to be the case. A course of conduct is sufficient, as a man cannot approbate and reprobate at the same time. *Vide* Lord Justice Stirling in *Re Brindley*.)

(Reported by W. H. Terry, Esq., Barrister-at-Law.)

### **Company Law.**

#### CHANCERY DIVISION.

May 15 and 22.

(Before BUCKLEY, J.)

#### *In re* **Crigglestone Coal Company, Lim.**

*Company—Winding-up—Petition of Unsecured Creditor—No Surplus Assets—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 79.*

Petition by unsecured creditor for a compulsory winding-up order.

The above-named company was incorporated to work certain collieries under leases which entitled the lessors to re-enter on a winding-up. Debentures, each constituting a floating charge on all the present and future property of the company, had been issued to a large amount, and some of them were held by directors of the company. On January 1906 a debenture-holders' action was commenced, and a receiver and manager had been appointed in that action. An unsecured creditor then presented a petition

in respect of goods supplied to the company in December 1905 for the compulsory winding-up of the company. The debt was admitted, but the petition was opposed by the debenture-holders and the company, on the ground that, as the amounts secured by the debentures exceeded the value of the company's assets, there were no assets available for the payment of the unsecured creditors, and that a winding-up order would cause a forfeiture of the leases, and would not benefit the unsecured creditors in any way.

## JUDGMENT.

Buckley, J., in a considered judgment, said that as between a company and its creditor who could not get paid the creditor was entitled to a winding-up order—*Bowes v. Hope Mutual Life Insurance Company* (1865, 35 L.J. Rep. Ch. 574, 11 H.L. Cas. 389), and *In re Western of Canada Oil Lands and Works Company* (1873, 43 L.J. Rep. Ch. 184; L.R. 17 Eq. 1.) His Lordship then considered the cases of *In re Chapel House Colliery Company* (1883, 52 L.J. Rep. Ch. 934; L.R. 24 Ch.D. 259) and *In re Krasnapolsky Restaurant and Winter Garden Company* (61 L.J. Rep. Ch. 593; L.R. (1892) 3 Ch. 174), and other cases, and said that in his view the absence of assets was no defence to a winding-up petition. Orders had often been refused on that ground, but merely because the Court does not make orders where no good can result. If an order would be useful, whether fruitful or not, there was jurisdiction to make it. In the present case a winding-up order would result in the Official Receiver controlling the defence in the debenture-holders' action, which would be a real advantage to the unsecured creditors, and one to which they were entitled. His Lordship therefore made a compulsory order, and refused a stay of proceedings pending an appeal.

The debenture-holders and the company appealed.

(L.J. 370.)

## COURT OF APPEAL.

May 31.

(Before COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.)

Appeal from the decision of Buckley, J. (reported above).

## JUDGMENT.

The Court affirmed the judgment of Buckley, J.

Collins, M.R., said that the onus of proving that in no possible case could the petitioner gain any advantage from a winding-up order rested on the appellants. They were met to start with by the proposition that a creditor whose debt is undisputed and who cannot obtain payment is entitled *ex debito justitiæ* to a winding-up order. Certain

exceptions had been engrafted on that rule, but, as Mr. Justice Buckley had pointed out, they were exceptions of a special character, and were at once displaced if the fact was established that the unsecured creditor might derive some benefit from the winding-up. If there was a reasonable probability, or even possibility, of the unsecured creditor getting some advantage, a winding-up order ought to be made so that he might be one of the parties to the debenture-holders' action, and not leave the proceedings in the hands of parties whose interest was inimical.

Romer, L.J., who concurred, said that looking at the evidence he was not satisfied that if the proceedings in this matter were attended by some one in the interests of the unsecured creditors, there might not be some surplus to come to them. The unsecured creditors were interested in the accounts to be taken of what was due on the debentures, and also in the possibility of attacking some of the debentures, although, in his Lordship's opinion, in the evidence before the Court there was nothing to show any ground for such an attack.

Cozens-Hardy, L.J., who also agreed, said that, speaking for himself, he attached great importance to winding up a company which had issued debentures of this kind, and was in a parlous condition.

Appeal dismissed.

(L.J. 402.)

## CHANCERY DIVISION.

May 29, 30, and 31.

(Before JOYCE, J.)

**Re Ehrmann Brothers, Lim.; Albert v. Ehrmann Brothers, Lim.**

*Company — Debentures — Registration — Extending Time — Winding-up — Protection of Creditors — Companies Act, 1900 (63 & 64 Vict. c. 48), secs. 14, 15.*

This was the hearing on further consideration of a debenture-holders' action. In 1900 the company created a series of debentures intended to rank *pari passu*. Some of this series was issued before the Companies Act, 1900, came into operation, and some after. Those issued after the Act were not registered in accordance with section 14 of the Act, which requires that all such debentures shall be registered within twenty-one days of their creation. In 1903 the company made an application under section 15 that the time for registration of these debentures might be extended, and by an order of the 24th of July 1903 the time for registration of these debentures was extended until the 14th of August 1903. This order contained the usual proviso that "this order is to be without prejudice to the

"rights of parties acquired prior to the time when such debentures shall be actually registered." These debentures were accordingly registered before the 14th of August 1903. On the 18th of February 1904 an order in the action was made directing inquiries as to the dates when these debentures were actually registered, and as to which of the unsecured creditors of the company at such dates of registration still remained unsatisfied. It was also ordered that Gonzalez, Byass & Co., Lim., unsecured creditors, should have liberty to attend on these inquiries. The case now came on for further consideration. For the plaintiffs it was contended that the proviso to the order of the 24th of July 1903 only gave rights in the nature of specific charges, and not to unsecured creditors, who were not given priority to these debenture-holders: *Re Joplin Brewery Co., Lim.*, *Re T. C. Johnson & Co., Lim.*, *Re Spiral Globe, Lim.*, and *Re S. Abrahams & Sons*. For the unsecured creditors it was urged that the proviso clearly disentitled these debenture-holders to take priority over the unsecured creditors: *Re N. Defries & Co., Lim.*; *Bowen v. N. Defries & Co., Lim.*, and *Re Anglo-Oriental Carpet Manufacturing Co.* Therefore the amount which these debenture-holders would have received if their debentures had been properly registered should be divided rateably between them and the unsecured creditors whose debts existed prior to the dates of registration.

## JUDGMENT.

Joyce, J., in giving a considered judgment, said that this was a question of the meaning of the proviso in the order extending the time for registration. It was clear from *Re Anglo-Oriental Manufacturing Co.* that such a proviso debarred the debenture-holder from taking priority over persons who were unsecured creditors before the registration, and it was impossible to differ from the judgment of Buckley, J., in that case. The fact that a winding-up had occurred before registration in that case made no difference. The creditors whose debts had been incurred before the date of registration take *pari passu* with the debenture-holders registering under the order the share of the assets which such debenture-holders would have taken if their debentures had been duly registered in accordance with section 14 of the Companies Act, 1900, the costs to come out of the fund so divisible between these creditors and debenture-holders.

(50 S.J. 526.)

## CHANCERY DIVISION.

May 31.

(Before WARRINGTON, J.)

**Shepherd v. Bray.**

*Company—Fraudulent Prospectus—Action by Shareholder—Liability for Contribution—Death of Director—Actio Personalis—Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), s. 3.*

This was an action brought by certain directors of the London and Northern Bank, Lim., against their co-directors for a declaration that the defendants were liable to contribute to any sums which the plaintiffs, or some of them, had paid or were liable to pay, arising out of the action of *Broome v. Speak* (51 W.R. 258; 1903, 1 Ch. 586), and numerous other actions brought against the present plaintiffs or some of them, under the provisions of the Directors' Liability Act, 1890. The directors had issued a prospectus containing an untrue statement, and in December 1901 the action of *Broome v. Speak* was commenced by a shareholder for compensation for loss sustained. The decision of Buckley, J., that the shareholder was entitled to succeed, was affirmed on appeal both by the Court of Appeal and by the House of Lords: *Shepherd v. Broome* (53 W.R. 111; 1904, A.C. 342). The present action was to recover contribution from the defendants. The defendant Bray had died since action brought, and it had been ordered that it should be continued against his executors; the defendants Simpson, Butler, and Wade were sued as the executors of Gaunt, and Oswald as the executrix of W. W. Oswald. The case was heard on the 14th, 15th, and 16th of May, and judgment was reserved.

## JUDGMENT.

Warrington, J., said that the plaintiffs' claim was based on section 5 of the Directors' Liability Act, 1890. There was a serious question of law raised by the executors of Bray and Gaunt respectively, as to whether the cause of action against Bray and Gaunt ceased with their deaths. The section provides that a person who has become liable shall be entitled to recover contribution "as in cases of contract." The right arises, not from any notion of implied contract, but as an equitable right springing from the relations of the parties as persons liable for the same debt. The right, though existing from the commencement of those relations, cannot be asserted by action until one of the parties has met the common obligation: see *Wolmershausen v. Gullick* (1893, 2 Ch. 514) and the cases there cited; see also *Gerson v. Simpson* (51 W.R. 610; 1903, 2 K.B. 197). The right of contribution existed from the commencement of the relations giving rise to the common obligation—namely, at the time when the shareholder incurred loss by reason of the untrue statement in the prospectus. The plaintiffs were therefore entitled to recover contribution from the estates of Bray, Gaunt, and Oswald, and from the other defendants.

(50 S.J. 526.)

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